

THE LEGAL ATTITUDE TOWARD
MENTAL ABNORMALITY

A Comparative Analysis
Of The Historical And Modern
Criminal Law Tests Of Responsibility
With Respect To Insanity, In England, Scotland
And The United States Of America

VOLUME II

By

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PART THREE

AND

APPENDIX

P A R T T H R E E

| | | | |
|--------------|---|---|-----|
| Chapter VIII | : | The McNaghten Rules | 207 |
| Chapter IX | : | The Basic Concepts: McNaghten Variations | 355 |
| Chapter X | : | The Problem Area: Legal Alternatives | 462 |

A P P E N D I X

| | | | |
|----|---|---|-----|
| A. | : | Psychopathic States: A Note On A Special Medico-Legal Problem | 545 |
| B. | : | Bibliography: Books | 566 |
| C. | : | Bibliography: Periodicals | 607 |
| D. | : | Addenda | 643 |

CHAPTER VIII

THE McNAGHTEN RULES

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| | |
|--|-----|
| The McNaghten Trial (1843) | 289 |
| Questions And Answers: McNaghten Rules | 293 |
| Effect On The Rules: Chief Justice Tindal's Charge & The Particularized Knowledge Test | 301 |
| Effect On The Rules: Prosecution's Knowledge Test | 302 |
| Table No. 4 | 307 |
| Table No. 5 | 310 |
| Effect On The Rules: Defence - Delusion And Irresistible Impulse | 312 |
| Effect Of Medical Opinion: Moral Insanity, Monomania, Delusions & Irresistible Impulse ... | 319 |
| Scottish Legal Influence: Effect On The Rules.. | 329 |
| Table No. 6 | 334 |
| Table No. 7 | 336 |
| Table No. 8 | 338 |
| Conclusions: Evaluation, Scope & Authority | 340 |

1

The McNaghten Trial (1843)

Daniel McNaghten shot Mr. Drummond, private secretary to Sir Robert Peel. Drummond died some days later. The shooting was done openly in broad day; a police constable was so near that he was able to prevent McNaghten from firing a second shot.

McNaghten had been in business for himself when he first began to be troubled with delusions of persecution. He imagined that the Tories had set spies to watch him. In consequence, he sold his business and did nothing for a time during which he regarded himself as being subject to continued persecutions. He left Glasgow and journeyed to France hoping to shake off his persecutors. When he returned to Glasgow it was with the firm conviction that he had been followed to France and further spies set to work against him. He left Glasgow still believing himself subject to persecution and proceeded to London where approximately

1. 10 Clark & Fin. 200; 1 Modern State Trials (Townsend Ed. 1850) 314.

six months later he shot Drummond.

When McNaghten was apprehended and on his way to the station house, he told the police constable that: "He ¹ shall not break my peace of "of mind any longer".

At the time of the preliminary hearing before a Bow Street magistrate, Drummond had not yet died. McNaghten at that time made a statement in which he indicated the nature and extent of the delusions troubling him: "The Tories in my native "city have compelled me to do this. They follow "and persecute me wherever I go, and have entirely "destroyed my peace of mind. They followed me to "France, into Scotland, and all over England; in "fact, they follow me wherever I go. I cannot get "no rest for them night or day. I cannot sleep at "night in consequence of the course they pursue "towards me. I believe they have driven me into a "consumption. I am sure I shall never be the man

1. Or she, the police constable could not recollect which it was.

"I formerly was. I used to have good health and
"strength, but I have not now. They have accused
"me of crimes of which I am not guilty; they do
"everything in their power to harass and persecute
"me; in fact, they wish to murder me. It can be
"proved by evidence. That's all I have to say" ¹.

To a psychiatrist even the way McNaghten
pleaded not guilty would have been significant.
On February 2nd, McNaghten was brought before Lord
Abinger at the Central Criminal Court. When called
upon to plead, "he made at first no reply to the
"question, but kept his eyes steadily fixed towards
"the bench" ². The question was repeated, and after
another interval of silence McNaghten finally said,
"I was driven to desperation by persecution" ³.
Upon being told that he had to answer either
"guilty" or "not guilty", he replied simply that he
was guilty of firing. In the end, Lord Abinger had

1. 1 Modern State Trials (Townsend Ed. 1850) p. 345.

2. Ibid, pp. 318, 319.

3. Ibid, p. 319.

to suggest, "By that do you mean to say you are
"not guilty ... of intending to murder Mr. Drummond?"
When McNaghten answered "Yes", Lord Abinger
pronounced, "That certainly amounts to a plea of
"Not Guilty" and ordered such a plea recorded ¹ .

Chief Justice Tindall presided at the
trial. After nine medical witnesses had testified
for the defence, the Chief Justice informed the
Solicitor-General that unless the Crown was prepared
"to combat this testimony of the medical witnesses",
the Court would stop the trial ² . Since the prosecu-
tion did not propose to introduce any medical
evidence, the Solicitor-General briefly summed up
and the Court instructed the jury in a short charge.
A verdict of "Not Guilty, on the ground of insanity,
³
"was returned" .

1. Loc. cit.

2. Ibid, p. 400.

3. Ibid, p. 402.

Questions and Answers: The McNaghten Rules

The verdict in the trial was not a popular one. As was usual in cases of "magnicide" the community feeling of outrage and desire for social vengeance were not satisfied by an acquittal on the ground of insanity. Since there had been no battle of experts, all the medical evidence having been in favor of the defence, the public seized upon the criminal law as having been in some way defective. As frequently happened, and still happens, the public attitude was in a large measure conditioned by fear. The report published a few years later (1850) indicated how extensive this feeling was: "People of good sense appeared panic-stricken by "this new danger from venturing into the London "streets, and called upon the legislature to "discover some preservative against the attacks of "insane passengers in public thoroughfares"¹ .

Sir Valentine Blake moved leave to bring in a bill that would have reduced the defence of insanity to the wild beast standard. The bill

1. Ibid, p. 320.

sought to abolish the defence in cases of "partial
"insanity" and to permit the defence only in cases
where the individual had been openly and notoriously
known or reputed to be a maniac in the community.
Even his contemporaries considered this too rash,
however, for the motion was not seconded¹ .

At the same time a movement of an
altogether different quality was initiated by Lord
Brougham's announced intention of dealing with the
matter. Others, including Lord Denman and Lord
Campbell, also indicated an interest. Lord
Lyndhurst, the Chancellor, gave his views during
the next few weeks that, "there could be ... no
"change in the legal definition of this most
"delicate and difficult subject", but admitted that
"the theory of a delusion ... was yet but imperfectly
"understood"² . Lord Cottenham added his own views

1. Loc. cit. The contemporary State Trials reporter
(Townsend) exclaimed in dry irony that, "The eager-
ness of the worthy baronet, that not a day's delay
might interpose between the danger and remedy, was
baffled by the sad accident of the motion not find-
ing a seconder !".

2. Ibid, pp. 320, 321.

opposing punishment for those having insane¹ delusions . Eventually it was agreed that the opinion of the Judges should be taken, and the Lord Chancellor submitted to them five questions on behalf of the House of Lords. The answers constituted the McNaghten Rules.

The second and third questions were treated as one and answered together. The first and fourth questions might have been similarly treated since they both dealt with delusions. In the subjoined exposition of the rules, that procedure has been followed. The fifth question was procedural, and could be separately considered. Mr. Justice Maule did not concur with his judicial brothers, and answered separately.

Question No. 1: "What is the law respecting alleged "crimes committed by persons afflicted with insane "delusion, in respect of one or more particular "subjects or persons; as, for instance, where, at "the time of the commission of the alleged crime,

1. Ibid, p. 322.

"the accused knew he was acting contrary to law,
"but did the act complained of with a view, under
"the influence of insane delusion of redressing or
"revenging some supposed grievance or injury, or
"of producing some public benefit?"

Answer No. 1: "Assuming that your Lordship's
"inquiries are confined to those persons who labour
"under such partial delusions only, and are not in
"other respects insane, we are of opinion that,
"notwithstanding the party did the act complained
"of with a view, under the influence of insane
"delusion, of redressing or revenging some supposed
"grievance or injury, or of producing some public
"benefit, he is nevertheless punishable, according
"to the nature of the crime committed, if he knew
"at the time of committing such crime, that he was
"acting contrary to law, by which expression we
"understand your lordship to mean the law of the
"land".

Question No. 4: "If a person, under an insane
"delusion as to the existing facts, commits an
"offence in consequence thereof, is he thereby
"excused?"

Answer No. 4: "The answer must of course depend on
"the nature of the delusion; but making the same
"assumption as we did before, that he labours under
"such partial delusion only, and is not in other
"respects insane, we think he must be considered in
"the same situation as to responsibility, as if the
"facts, with respect to which the delusion exists,
"were real. For example, if, under the influence
"of his delusion, he supposes another man to be in
"the act of attempting to take away his life, and
"he kills that man, as he supposes, in self-defence,
"he would be exempt from punishment. If his
"delusion was that the deceased had inflicted a
"serious injury to his character and fortune, and
"he killed him in revenge for such supposed injury,
"he would be liable to punishment".

Question No. 2: "What are the proper questions to
"be submitted to the jury, when a person, alleged
"to be afflicted with insane delusion respecting
"one or more particular subjects or persons, is
"charged with the commission of a crime (murder,
"for example), and insanity is set up as a defence?"

Question No. 3: "In what terms ought the question
"to be left to the jury as to the prisoner's state
"of mind at the time when the act was committed?"

Answer No. 2 and 3: "That the jury ought to be told
"in all cases that every man is presumed to be sane,
"and to possess a sufficient degree of reason to be
"responsible for his crimes, until the contrary be
"proved to their satisfaction; and that to establish
"a defence on the ground of insanity, it must be
"clearly proved that, at the time of the committing
"of the act, the party accused was labouring under
"such a defect of reason, from disease of the mind,
"as not to know the nature and quality of the act
"he was doing, or, if he did know it, that he did
"not know he was doing what was wrong. The mode of
"putting the latter part of the question to the jury
"on these occasions has generally been, whether the
"accused, at the time of doing the act, knew the
"difference between right and wrong; which mode,
"though rarely if ever leading to any mistake with
"the jury, is not, as we conceive, so accurate when
"put generally and in the abstract, as when put to
"the party's knowledge of right and wrong in respect
"to the very act with which he is charged. If the

"question were to be put as to the knowledge of the
"accused solely and exclusively with reference to
"the law of the land, it might tend to confound the
"jury, by inducing them to believe that an actual
"knowledge of the law of the land was essential in
"order to lead to a conviction, whereas the law is
"administered upon the principle that every one
"must be taken conclusively to know it, without
"proof that he does know it. If the accused was
"conscious that the act was one which he ought not
"to do, and if that act was at the same time contrary
"to the law of the land, he is punishable, and the
"usual course, therefore, has been to leave the
"question to the jury, whether the party accused had
"sufficient degree of reason to know that he was
"doing an act that was wrong; and this course we
"think is correct, accompanied with such observa-
"tions and explanations as the circumstances of
"each particular case may require."

Question No. 5: "Can a medical man, conversant with
"the disease of insanity, who never saw the prisoner
"previously to the trial, but who was present during
"the whole trial and the examination of all the
"witnesses, be asked his opinion as to the state of

"the prisoner's mind at the time of the commission
"of the alleged crime, or his opinion whether the
"prisoner was conscious, at the time of doing the
"act, that he was acting contrary to law, or whether
"he was labouring under any and what delusion at
"the time?"

Answer No. 5: "We think the medical man, under the
"circumstances supposed, cannot in strictness be
"asked his opinion in the terms above stated,
"because each of those questions involves the
"determination of the truth of the facts deposed to,
"which it is for the jury to decide; and the
"questions are not mere questions upon a matter of
"science, in which case such evidence is admissible.
"But, where the facts are admitted or not disputed,
"and the question becomes substantially one of
"science only, it may be convenient to allow the
"question to be put in that general form, though
"the same cannot be insisted on as a matter of right."

Effect on the Rules: Chief Justice Tindal's Charge
and the Particularized Knowledge Test

From the circumstances that gave rise to the McNaghten Rules it was obvious that the McNaghten Trial was carefully reappraised by the Judges before they gave their answers. In seeking to determine the precise factors that moulded the Rules, it was, therefore, necessary to examine each aspect of that trial in detail. The first aspect to be considered had to be the judicial charge to the jury.

Unfortunately, the charge could contribute little. It was necessarily brief, since the trial had already been halted in the face of the one-sided medical testimony. The Chief Justice simply affirmed, in few words, the knowledge test as then understood in English law. He framed the question for the jury as "whether ... at the time the act was committed ... (the accused) had that competent use of his understanding as that he knew that he was doing, by the very act itself, a wicked and a

"wrong thing"¹ . The test was the particularized knowledge test already familiar in England. The referred standard was both moral and legal; if the accused did not know his act was "a violation of "the law of God, or of man"² he was not responsible . There was, therefore, nothing in the judicial charge that was not to be found in previous cases. The charge merged with the common law background as an influencing force upon the Rules. Particularly was this so in light of the fact that delusion was not mentioned at all in the charge, despite its important role in the trial.

Effect on the Rules: Prosecution's Knowledge Test

Another aspect of the trial to be considered by the Judges was the viewpoint of the prosecution.

1. 1 Modern State Trials (Townsend ed. 1850) p.401. The only other reference made to the test that the jury were to employ was, "if, on balancing the evidence in your minds, you think the prisoner capable of distinguishing between right and wrong, then he was a responsible agent, and liable to all the penalties the law imposes". Ibid, pp.401,402.

2. Ibid, p. 401.

With respect to the knowledge test, the Solicitor-General expressed, less explicitly, the view that the Chief Justice was later to take in the charge. Nor could that be considered surprising if the English case law development were to be acknowledged.

His reasoning anent the knowledge test was simply this:

1. "Total permanent want of reason ... will acquit¹ the prisoner" .
2. "Total temporary want (of reason) ... will acquit the prisoner",
 - a. If it existed "when the offence was² committed" .
3. "A partial degree of insanity, mixed with a³ partial degree of reason" would convict unless the accused,

1. Ibid, p. 332.

2. Loc. cit.

3. Loc. cit. He explained this as "not a full and complete use of reason".

- a. Lacked "faculty to distinguish the nature¹ of actions", or
- b. Lacked faculty "to discern the difference between moral good and evil".

Elsewhere, however, he phrased the test in broader terms, saying that "if you believe that "when he fired the pistol he was incapable of "distinguishing between right and wrong - if you "believe that he was under the influence and control "of some disease of the mind which prevented him "from being conscious that he was committing a crime " - if you believe that he did not know he was "violating the law both of God and man, then, "undoubtedly, he is entitled to your acquittal"² .

This extract made two things clear. First, the standard of right and wrong was a legal one as well as a moral one. Second, a disease of the mind was regarded as the necessary operating

1. The disjunctive was not actually used since the two phrases (a. and b. above) were separated only by a comma; but even if they were meant merely in apposition the usage would still be justified in terms of derivation.

2. Ibid, p. 330.

cause of the reasoning defect. What was not made clear, however, was whether the lack of knowledge was meant generally or with respect to the particular act.

On the whole, it may be concluded, a particularized knowledge test was implied, even though never explicitly stated. Consideration of state of mind was restricted to the time of the act, as indicated in the extract. Furthermore, at still another place in his address to the jury, the Solicitor-General stated the test for responsibility to be, "did (the accused) know right from wrong, "and ... was (he) aware of the consequences of the "act which he committed?"¹ . Language used to the jury could not have been meant to be interpreted with the strictness applied to a contract or other legal document. Hence the phrase "act which "he committed" apparently was meant to be understood in reference to knowledge of right and wrong as well as with reference to awareness of the

1. Ibid, p. 339.

consequences. Finally, the alternative view (i.e., general lack of knowledge of right and wrong) was difficult to reconcile with the statement that the persons to whom the test applied possessed a "partial degree of reason".

From what has been said, there were obvious points of similarity between the McNaghten Rules language and some of the phrases used by the Solicitor-General.

Table No. 4, overleaf, illustrates the similarities mentioned above.

TABLE NO. 4

Comparison of Phraseology Between the Solicitor-
General's Address (McNaghten's Trial) and the
McNaghten Rules

| <u>Solicitor-General</u> <u>(McNaghten's Trial)</u> | <u>McNaghten Rules</u> |
|---|--|
| "a partial degree of reason" | "labouring under ... defect of reason" |
| "not a full and complete use of reason" | |
| ----- | ----- |
| "under the influence and control of some disease of the mind" | "from disease of the mind" |
| ----- | ----- |
| "faculty to distinguish the nature of actions" | "as not to know the nature" |
| ----- | ----- |
| "aware of the conse- quences" | "and quality" |
| ----- | ----- |
| "of the act which he committed" | "of the act he was doing" |
| ----- | ----- |
| "knew right from wrong" | "or ... that he did not know he was doing what was wrong" |
| ----- | ----- |
| "when he fired the pistol" | "at the time of doing the act" |
| ----- | ----- |
| "conscious that he was committing a crime" | "conscious that the act was contrary to the law of the land" |
| ----- | ----- |

The direct comparison of language yielded much the same result as the comparison between Oxford's case and the McNaghten Rules. (See Table No. 1, Chapter IV). There was an undoubted closeness, but no more than to be expected when a viewpoint had become familiar and fairly well established in law. Then too, the fact that only a few years separated Oxford's case, McNaghten's trial and the McNaghten Rules was important. There could be no doubt that the Solicitor-General had studied Oxford's case closely. It had occurred only three years earlier, the Queen was the intended victim, and the same problem was involved. That study could be reflected in general similarities of expression such as Table No. 5 indicates. There could also be no question that the McNaghten Rules Judges were familiar with both Oxford's case and the McNaghten trial. See Table No. 5. Nonetheless, the traceable influence can only be said to have been general, in the sense that precedent always is. The phrases indicated in the tables possessed undoubted similarities, but lacked another essential element - continuity of expression. Unless there were both similarity of phraseology

and similarity in continuity, then the influence can not be said to have been direct. Such pointed influence did exist, however, and could be demonstrated, as will be shown elsewhere, with respect to Hume.

Concerning delusion, the Solicitor-General had very little to say. He regarded delusion as partial insanity with respect to subject matter, and stated that the knowledge test was to be applied as in any instance of partial insanity accompanied by partial reason ¹. As might have been expected, he attacked the Erskine formulation in Hadfield's case. ² Aside from these rather forced denials of delusion, the concept found no further place in his address to the jury.

1. 1 Modern State Trials (Townsend ed. 1850) p.330. The express observation was: "To excuse him, it will not be sufficient that he laboured under partial insanity upon some subjects-that he had a morbid delusion of mind upon some subjects, which could not exist in a wholly sane person; that is not enough, if he had that degree of intellect which enabled him to know and distinguish between right and wrong..."

2. Ibid, pp. 334, 335. He argued that, "A party may have that state of mind which would render him wholly unconscious of right and wrong .. and yet the crime may not be the offspring of any delusion be labours under". Furthermore, he contended, "parties may be liable to be punished .. although they did labour under a delusion, and although the act may have been committed under that delusion". He thought, therefore, that "the doctrine of Lord Erskine (was) not true in either way to its fullest extent".

TABLE NO. 5.

General Comparisons: Oxford's Case, McNaghten's Trial and the McNaghten Rules.

| <u>Oxford's Case.</u> | <u>Solicitor-General. (McNaghten's Trial)</u> | <u>Chief Justice Tindal (McNaghten's Trial).</u> | <u>McNaghten Rules.</u> |
|--|---|---|--|
| "labouring under that species of insanity" | "a partial degree of reason." | "competent use of his understanding". | "labouring under..... defect of reason". |
| "under the influence of a diseased mind" | "under the influence and control of some disease of the mind" | "as to the state of the mind.....the whole of the medical evidence is on one side". | "from disease of the mind". |
| "quite unaware of the nature, character and consequences". | "faculty to distinguish the nature of actions" | | "as not to know the nature and quality". |
| | "aware of the consequences". | | |
| "of the act he was committing". | "of the act which he committed". | "by the very act itself". | "of the act he was doing". |

TABLE NO. 5. (Continued).

| <u>Oxford's Case.</u> | <u>Solicitor-General. (McNaghten's Trial)</u> | <u>Chief Justice Tindal (McNaghten's Trial)</u> | <u>McNaghten Rules.</u> |
|--|---|--|---|
| "incapable of distinguishing right from wrong" | "know and distinguish between right and wrong". | "capable of distinguishing between right and wrong". | "or.....that he did not know he was doing what was wrong" |
| "at the time the act was done". | "when he fired the pistol". | "at the time the act was committed". | "knew the difference between right and wrong". |
| | | | "at the time of doing the act". |

Effect on the Rules: Defence - Delusion and Irresistible Impulse

It might be said that the McNaghten trial, wholly aside from its effect on the public and without regard to the subsequent McNaghten Rules, brought the English historical development to a head. The Chief Justice in his charge to the jury, and the Solicitor-General in his address to the jury, emphasized the dominant branch of legal development- i.e., the particularized knowledge test. The defence, on the other hand, while acknowledging the knowledge test, as they must, emphasized the other, less robust, branch of legal development. That branch grew in English law from Erskine's delusion defence in Hadfield's case, and attained full growth in Oxford's case with the enunciation of an irresistible impulse test. McNaghten's defence made clear the close relationship assumed between delusion and irresistible impulse in the middle of the nineteenth century. The climate for such thinking could be traced, in faint form, as far back as Coke and Hale with their talk of fear and grief as causative factors in mental abnormality.

As might have been expected, the defence paid extreme deference to Erskine's delusion concept in Hadfield's case and disagreed with the Solicitor-General's attempt to explain that concept away. Similarly, such reliance as the prosecution had placed in extreme applications of the knowledge test, as in Bowler's case, was attacked by the defence who pointed out there was judicial opinion¹ in support of such refutation. These, and other instances of conflict in interpretation of precedent, were natural when the English common law was still fluid in process of development.

The theory of the defence, as reconstructed from the bits and pieces of law submitted to the jury, amounted to this: Madness was a disease, similar to other physical diseases, but affecting² the mind. It could be either congenital or acquired.

1. 1 Modern State Trials (Townsend ed. 1850) p.363. It was stressed that when Bowler's case was mentioned during the course of Oxford's trial, Mr. Baron Alderson had observed: "Bowler, I believe, was executed, and very barbarous it was".

2. Ibid, p. 355. "It is now, I believe, a matter placed beyond doubt, that madness is a disease of the body operating upon the mind".

but in either event it impaired the functions of
the mind¹. The functions of the mind were, in turn,
divisible into either "those of the intellect or
"faculty of thought" ("such as perception, judgment,
reasoning") or "those of the moral faculties" ("the²
sentiments, affections, propensities, and passions").
If the intellectual faculty were impaired, the test
of judging right from wrong was sufficient, but if
the moral faculty were impaired, that test was
useless³.

Impairment of the moral faculty led to
delusions; and if these delusions caused a criminal

1. Ibid, p. 365. "it is clear that all defects in the cerebral organization, whether congenital...or supervening either by disease or by natural and gradual decay, have the effect of impairing and deranging the faculties and functions of the immaterial mind".

2. Loc. cit. "To the most superficial observer who has contemplated the mind of man, it must be perfectly obvious that the functions of the mind are of a twofold nature-those of the intellect or faculty of thought alone- such as perception, judgment, reasoning - and, again, those of the moral faculties - the sentiments, affections, propensities, and passions.."

3. Ibid, p. 366. The alternative possibilities were: "incapable of judging between right and wrong, or of exercising that self-control and dominion, without which the knowledge of right and wrong would become vague and useless..."

act, there was no criminal responsibility¹. The reasoning was that "aberration of the moral sense", either "partial or total" resulted in delusions irresistible in nature², and if the act arose out of these delusions, it too could not be controlled, and hence was not punishable³.

Although arrived at in a rather circuitous fashion, the defence conclusion was that irresistible impulse was the essence of delusion. Numerous allusions made that quite clear. Thus the defence spoke of "delusion, exercising a blind and imperious

1. Ibid, p. 370. "if, then, you shall find in this case that the moral sense was impaired, that this act was the result of a morbid delusion, and necessarily connects itself with that delusion ... your verdict must be in favour of the prisoner at the bar!"

2. Ibid, p. 380. "the disease of partial insanity can exist -.. it can lead to a partial or total aberration of the moral senses and affections, which may render the wretched patient incapable of resisting the delusion, and lead him to commit crimes for which morally he cannot be held to be responsible, and in respect of which ... he is withdrawn from the operation of human laws".

3. Ibid, pp. 367, 368. "The question is ... whether under that delusion of mind he did an act which he would not have done under any other circumstances, save under the impulse of the delusion which he could not control, and out of which delusion alone the act itself arose".

"influence over the man"¹ . At another point, reference was made to, "a real delusion, by which the
"prisoner was deprived of all possibility of self-
"control, and which left him a prey to violent
"passions and frenzied impulses"² . Reference was
also made to "impulse so irresistibly strong as to
"annihilate all possibility of self dominion or
"resistance"³ .

Behind all the facade of irresistible
impulse was a simple allegation of no mens rea. It
could be spelled out somewhat as follows: Murder
required a "wilful" mental element; which might be
regarded as another way of saying "malice" to a jury.
But human will involved the moral sense, hence a
defect of the latter rendered the former inoperative.⁴

1. Ibid, p. 377.

2. Ibid, p. 378.

3. Ibid, p. 370.

4. Ibid, p. 364. "That which you have to determine is, whether the prisoner at the bar is guilty of the crime of wilful murder. Now by 'wilful' must be understood, not the mere will that makes a man raise his hand against another ... but by will, with reference to human actions, must be understood the necessary moral sense that guides and directs the volition, acting on it through the medium of reason".

The existence of delusion, if established, became the keystone supporting the entire arch with its diverse elements of "moral faculty", irresistible impulse, and lack of "wilfulness". The "best test of the reality" of given delusions, the defence suggested, was that the individual "should act exactly as a sane man would have done, if they had¹ been realities instead of delusions" .

It is submitted that this was adopted by the McNaghten Rules judges and incorporated into what has been called their "mistake of fact" test of delusions. It will be recalled that in Answer No. 4, the McNaghten Rules stated: "we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real". Elsewhere in this chapter this "mistake of fact" concept of delusion will be evaluated; at this point the problem is one of McNaghten Rule origins or influencing factors.

1. Ibid, p. 372.

A single similarity could not establish source. There was, however, another strong point of resemblance between a defence view in McNaghten's trial and Answer No. 4 of the Rules. The defence suggested various distinctions between the "common murderer" and the "unhappy maniac, who, in self-defence as he thinks, slays one who, in his delusion,¹ "he fancies is attacking him" . This might be contrasted with the illustration for mistake-of-fact delusion given in Answer No. 4: "For example, if, "under the influence of his delusion, he supposes "another man to be in the act of attempting to take "away his life, and he kills that man, as he supposes, "in self-defence, he would be exempt from punishment."

A far larger number of similarities of expression existed between Oxford's case, and the prosecution and the Chief Justice in the McNaghten trial, on the one hand, and the McNaghten Rules on the other. Yet no conclusion of any influence greater than that ordinarily exerted by general

1. Ibid, p. 379.

precedent could be ventured. Nonetheless, it may be fairly confidently submitted that the defence did influence Answer No. 4 in the two particulars mentioned, simply because no other record of similar expressions in a single source could be found. And since Question No. 4 seems to have been directly inspired by the facts in McNaghten's trial, it was perhaps obligatory and certainly quite natural for the Judges to scan the record thoroughly in that respect.

Effect of Medical Opinion: Meral Insanity, Monomania, Delusions and Irresistible Impulse

It has been pointed out that the thinking of the McNaghten Rules "operate(d) with specific "psycho-pathological notions which only remotely¹ "conform to present-day psychiatric conceptions". It has also been said, by a legal authority, that the McNaghten Rules were formulated "before the "science of psychiatry was born", and at a "time "when Francis Gall's fantastic theory of phrenology

1. Brasol, Elements of Crime (1927) p. 297.

"was at the height of its popularity"¹ . Comments to the same effect are perhaps even more common from medical writers² . Behind them is the implication that had the authors of the McNaghten Rules had the benefit of modern psychiatric opinion, the Rules would have been altogether different. That point must remain moot, even though there is room to doubt it in view of numerous modern statements³ justifying retention of the Rules unchanged .

While many remedies have been suggested for this defect of 1843 judicial understanding of twentieth century medicine, the most popular remains

1. Weihofen, *Insanity As A Defense In Criminal Law* (1933) p. 4.

2. The Report of the Committee on Criminal Responsibility of the Medico-Psychological Ass'n of Gt. Brit. and Ire., in 1923, before Lord Justice Atkin's Committee on Insanity and Crime, stated that "it must be assumed (that) the judges framed the M'Naughton Rules in accordance with what they were advised was the generally accepted medical view as to the nature of insanity". Cmd. 2005 at p. 30.

3. See, for example, Ellenbogen, "The Principles of the Criminal Law Relating to Insanity" in the *Journal of Criminal Science* (Camb. Dept. of Crim. Sc.) Vol.1: 1948, p. 178.

1

the doctrine of irresistible impulse . Elsewhere in this thesis, that doctrine will be examined in its own right as a remedial proposal. At this point, it is only being considered with reference to the McNaghten Rules. Modern medical thinking has been able to lead responsible medical groups such as the British Medical Association to champion irresistible impulse. As will be indicated later in this chapter, medical opinion in McNaghten's trial and elsewhere during the middle of the nineteenth century had also championed irresistible impulse. To that extent then, no great loss was occasioned by the fact that the McNaghten Rules¹ Judges sat in 1843 rather than in 1950. That group of judges must have considered irresistible impulse, even though it was then based on medical concepts now no longer accepted by the profession. It is

1. As late as the 3rd of February, 1950, the Council of the British Medical Association went on record before the Royal Commission on Capital Punishment with a proposal that if by "disorder of emotion such that, while appreciating the nature and quality of the act, and that it was wrong, he did not possess sufficient power to prevent himself from committing it," that should be an adequate legal defence. Minutes of Evidence, p. 318.

submitted that irresistible impulse as a legal defence was not overlooked nor ignored, but deliberately rejected in the McNaghten Rules.

Had the doctrine of irresistible impulse appeared only in Oxford's case and in a few random phrases elsewhere, it might have been overlooked, although even that may be a dangerous assumption. The alternative theory that perhaps it was ignored is premised on the assumption that the Rules were not intended as a complete exposition of insanity, but were merely specific answers to specific questions. If, arguendo, the assumption be taken as true, the theory must still be rejected since irresistible impulse was explicitly maintained as a matter of law and as a matter of medicine in McNaghten's trial. The judges could hardly have framed even limited answers without reference to the trial that gave rise to the questions.

So far as the legal view was concerned, the defence propounded a delusion-irresistible impulse doctrine of the order previously indicated.

That view rested heavily on the medical evidence¹.
It, therefore, remains for the medical views concern-
ing irresistible impulse in the McNaghten trial to
be considered.

In many respects psychiatry was still in
its swaddling clothes at the time of the McNaghten
trial. Emil Kraepelin and Sigmund Freud had not
yet been born. In Britain, Sir Thomas Clouston of
Edinburgh was three years old. By 1830, John
Connolly was still fighting the battle for non-
restraint at the Hanwell Asylum.

In other respects, however, psychiatry had
made some significant advances. The York Retreat
had been in existence for more than half a century
since William Tuke had founded it in 1792. And as
far back as 1798, Pinel had struck the chains from
the insane at the Bicetre Hospital in Paris.

1. Again and again, defence counsel alluded to
"the practical conclusion of these investigations
of modern science upon the subject of insanity".
Ibid, p. 370.

The specific concept from which the defence and the medical witnesses in McNaghten's trial derived irresistible impulse was moral insanity. The history of that concept has been traced by Sir D.K. Henderson¹. He indicated that Dr. J.C. Prichard in 1835, "under the title of "moral insanity and moral imbecility, drew attention "to certain states which were characterized by a "disorder of the affections and feelings in contra-² "distinction to understanding and intellect" . Dr. Ray, the American psychiatrist, was also mention-³ ed as a pioneer in this kind of thinking , and, significantly, Ray's writings were cited and quoted by the McNaghten defence in greater profusion than any other authority, medical or legal. In 1833, an English translation of Esquirol's "Observations on "the Illusions of the Insane, and on the Medico- "Legal Questions of their Confinement" had also⁴ appeared, in London . From many sources, medicine

1. Psychopathic States (London, 1939).

2. Ibid, p. 11.

3. Ibid, p. 15.

4. Translated by William Liddell; Published by Renshaw and Rush, London.

had made contributions to the concepts of moral insanity and delusion in the period just prior to McNaghten's trial.

These contributions were doubly important. First, they were forerunners of the conditions now termed "psychopathic states", which constitute what is probably the most difficult modern problem within the complex situations that may call forth an insanity defence. Second, they became the foundations of the actual medical testimony in McNaghten's trial, and the basis for the irresistible impulse doctrine developed there.

Dr. E.T. Monro testified in direct examination that "monomania may exist with general¹ "sanity" . This erroneous idea that the mind could be split up into compartments or faculties, some wholly sound and others wholly unsound, was not

1. 1 Modern State Trials (Townsend ed. 1850) p.396. This was in response to the question, "is it consistent with the pathology of insanity, that a partial delusion may exist, depriving the person of all self-control, whilst the other faculties may be sound?"

confined to medical thinking. It had legal support in Hale's concept of "partial insanity" respecting particular subjects or persons. Once monomania was accepted, it was an easy matter to pass on to moral insanity where the emotional factors, affection and feeling, might be considered partially or wholly defective while the intellectual or reasoning faculties were considered wholly sound. Thus, under cross-examination, Dr. Monro "thought a person might "be of unsound mind, labour under a morbid delusion, "and yet know right from wrong"¹. This led to the conclusion of irresistible impulse flowing from the morbid delusion. In direct examination, Dr. Monro had stated that he "considered the act of the "prisoner, in killing Mr. Drummond, to have been "committed whilst under a delusion", and he had "not the remotest doubt ... of the presence of "insanity sufficient to deprive the prisoner of "all self-control"². Ultimately, therefore,

1. Ibid, p. 397.

2. Ibid, p. 396.

irresistible impulse was derived from monomania and moral insanity, by way of morbid delusion. On cross-examination, the Solicitor-General asked, "Have you heard of what is called moral insanity?" "Have you read the works of M. Marc?"¹ Dr. Monro replied, "I understand what monomania means. It "is attended by an irresistible propensity to thieve "or burn, without being the result of particular "motives"² .

The other medical witnesses testified to the same effect. Sir Alexander Morrison stated that McNaghten was subject to delusions of perse-³cution and the effect "deprived the prisoner of "all restraint or control over his actions"⁴ . Mr. M'Clure, a Harley Street surgeon, testified that

1. Ibid, p. 397.

2. Ibid, pp. 397, 398.

3. Ibid, p. 398. Sir Alexander Morrison was asked, "The prisoner's morbid delusions consisted in his fancying himself subject to a system of persecutions?" He replied, "Yes; that was the peculiar cause of his insanity".

4. Loc. cit.

McNaghten "was suffering from an hallucination which
"deprived him of all ordinary restraint", and as a¹
result of which his "moral liberty was destroyed" .
Dr. W. Hutchenson concluded that "the act was the²
"consequence of the delusion, which was irresistible!"
Dr. Crawford, Mr. Aston Key and Mr. Winslow all
confirmed the preceding physicians.

The barrage of unopposed, vigorous,
medical evidence led Mr. Chief Justice Tindal to
halt the trial after the ninth medical witness had
taken the stand. In his charge to the jury, the
Chief Justice made it quite plain how strongly the
medical evidence had affected him and his colleagues,
Mr. Justice Williams and Mr. Justice Coleridge.
He stated, "I have undoubtedly been very much struck,
"and so have my learned brethren, by the evidence
"we have heard during³ the evening, from the
"medical persons..." . At another point he observed,

1. Loc. cit. The witness apparently meant delusion when he said hallucination; although even then most of the witnesses used the term delusion, the usage was loose enough to permit other terms more strictly defined today.

2. Ibid, p. 399.

3. Ibid, p. 401.

"I cannot help remarking, in common with my learned
"brethren, that the whole of the medical evidence
"is on one side, and that there is no part of it
"which leaves doubt on the mind"¹. Not a word was
said to the jury on the proposition of irresistible
impulse. It may be concluded that that aspect of
the evidence, as well as delusion and moral insanity,
gave rise to no doubt in the judicial mind.

When to that factor can be added the
recognition of irresistible impulse in Oxford's
case, and the strong role it played in McNaghten's
acquittal, there can be little doubt that irresisti-
ble impulse as a legal doctrine was considered and
specifically rejected by the McNaghten Rules Judges.

Scottish Legal Influence: Effect on the Rules

At a number of places in the McNaghten
trial and the subsequent proceedings that led to
the Rules, Scottish legal opinion was cited. This
was not strange for the Scottish rules laid down in

1. Loc. cit.

Hume and Alison were far more explicit than an English case law amalgam of precedent could be; there was too much room for argument about interpretation and distinctions for case law to be as specific as well thought out treatise exposition. Even in Oxford's case, three years earlier, the Solicitor-General had cited Alison¹. During the debates in the House of Lords, Alison was again cited. Lord Lyndhurst stated that "the test suggested by Alison in his Treatise on the Scottish Criminal Law, 'Had the prisoner reason with respect² to the act in question?' was the true one". Lord Cottenham "agreed with Alison in thinking a "mad person may be conscious that murder is a crime, "but may believe that a particular homicide is in "no way blamable"³. It was natural that Alison should be so frequently cited since his was the most recent treatise on criminal law in Scotland. Nor was there an English treatise recent enough and as authoritative as the Scottish writing.

1. Trial of Oxford, 1 Mod. St. Tr. (Townsend ed. 1850) p. 112.

2. Trial of McNaghten, 1 Mod. St. Tr. (Townsend ed. 1850) p. 321.

3. Ibid, p. 322.

During the course of the trial itself, defence counsel pointed out to the jury that, "the Scottish writers on jurisprudence had discussed "the subject, what excuse should avail, very "clearly"¹ . In addition, he quoted an extract from Hume of surprising length. Table No. 6 gives some idea of the extent of the quotation² . It was not surprising, therefore, that the authors of the McNaghten Rules should have turned to Scottish sources; and, in view of the result of the trial, it was not strange that they should have paid particular heed to Hume upon whom the defence had placed such heavy reliance³ .

It is submitted that the Judges responsible for the Rules did more than merely consult Hume in the sense that they had consulted other authorities and cases. A direct and striking parallel may be demonstrated between that passage from Hume

1. Ibid, p. 366.

2. The defence quoted the entire extract including those passages marked in red in Table No. 6.

3. The extract from Hume constituted the longest quotation of authority in the trial.

quoted by the defence, and the McNaghten Answer to Questions No. 2 and 3. This influence may be characterized as direct and immediate because there was not only similarity of phraseology, but the same order of development of ideas as well. Tables No. 6, 7 and 8 have been designed to illustrate both the similarity in phraseology and in continuity.

Table No. 6 contains the Hume extract with certain passages marked in red, while Table No. 7 contains the Answer to Questions No. 2 and 3 with other passages marked in red. These passages constituted the material where little significant correlation could be shown, and they were, therefore, omitted in Table No. 8. In Table No. 8, the remaining passages of Tables No. 6 and 7 (black letter) have been arranged, with one very minor exception, exactly as they occurred in the original writings. The parallels of phrase and order become readily apparent.

It may therefore be concluded that Answer No. 2 and 3 of the Rules owed more to Hume than any other source, but that it also reflected previous English formulations, particularly Oxford's

case and the viewpoints of the prosecution and the Chief Justice in the McNaghten trial. It might be ventured that when the Rules were being written, the Judges had the English case law firmly and clearly in mind, but that either a copy of Hume or a copy of the defence speech containing the Hume extract, lay open on the table before them. The Hume influence was direct and unmistakable.

Tables No. 6, 7 and 8 follow overleaf.

TABLE NO. 6

Extract from Hume's Commentaries
(Second edition 1819, pp.36, 37)

Legend:

Red Type - Material Omitted in Table No. 8
Black Type - Material Retained in Table No. 8

To serve the purpose, therefore, of a defence in law, the disorder must amount to an absolute alienation of reason, "ut continua mentis alienatione, omni intellectu acreat," - such a disease as deprives the patient of the knowledge of the true aspect and position of things about him, - hinders him from distinguishing friend or foe, - and gives him up to the impulse of his own distempered fancy.

Whether the man must have utterly lost the knowledge of good and evil, right and wrong, is a more delicate enquiry, and fit perhaps to be resolved differently, according to the sense in which the question is put. If it is put in this sense, - in a case, for instance, of murder, Did the pannel know that murder is a crime? Would he have answered, on the question, that it is wrong to kill a fellow creature? this is hardly to be reputed a just criterion of such a state of soundness, as ought to make him answerable to the law for his actions. Because a person may happen to answer in this way, who yet is so absolutely insane as to have lost all power of observation of facts, all discernment of the good or bad intentions of those who are about him, or even the knowledge of their persons.

TABLE NO. 6
(continued)

But if the question is put in another and a more special sense, as relative to the act done by the pannel, and his knowledge of **the situation in which he did it, Did he, as at that moment, understand** the evil of what he did? Was he impressed with the consciousness of guilt, and fear of punishment?- it is then a pertinent and a material question, but one which cannot be rightly answered, without taking into consideration the whole circumstances of the situation. **Every judgment in the matter of right and wrong supposes a case, or state of facts to which it applies. And though the pannel have that vestige of reason, which may enable him to answer in the general, that murder is a crime; yet if he cannot distinguish a friend from an enemy, or a benefit from an injury, but conceives everything about him to be the reverse of what it really is, and mistakes the illusions of his fancy in that respect for realities, "absurda et tristia sibi dicens atque fingens"; those remains of intellect are of no sort of service toward the government of his actions, or for enabling him to form a judgment as to what is right or wrong on any particular occasion. If he does not know the person of his friend, or is possessed with the vain conceit that his friend is there to destroy him, and has already done him the most cruel wrongs, and that all about him are engaged in a conspiracy to abuse him, as well might he be utterly ignorant of the quality of murder. Proceeding, as it does, on a false case, or a conjuration of his own fancy, his judgment of right and wrong, is, as to the question of responsibility, truly the same as none at all. It is therefore only in this special sense, as relative to the particular thing done, and the condition of the man's belief and consciousness on that occasion, that an inquiry concerning his intelligence of moral good or evil seems to be material to the issue of his trial.**

TABLE NO. 7

McNaghten Rules
(Answer To Questions No. 2 and No. 3)

Legend:

Red Type - Material Omitted in Table 8
Black Type - Material Retained in Table 8

That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely if ever leading to any mistake with the jury, is not, as we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the

TABLE NO. 7
(continued)

jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that everyone must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if the act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

TABLE NO. 8

Comparison of Phraseology and Order of Development: Hume's "Commentaries" and the McNaghten Rules' Answer to Questions No. 2 and 3

| <u>Hume's "Commentaries"</u> | <u>:McNaghten Answer No. 2 & 3</u> |
|---|---|
| "To serve the purpose, therefore, of a defence in law, | :"to establish a defence on the ground of insanity, |
| the disorder must amount to an absolute alienation | : it must be clearly proved that ...accused was labour- : ing under such a defect |
| of reason - | : of reason, |
| such a disease | : from disease of the mind, |
| as deprives the patient of the knowledge | : as not to know |
| of the true aspect and position of things about him... | : the nature and quality of : the act he was doing |
| -and give him up to the impulse of his own dis-tempered fancy". | : or... that he did not : know he was doing what : was wrong". |
| "Whether the man | :"...whether the accused |
| must have utterly lost the knowledge of good and evil, right and wrong | : at the time of doing the : act, knew the difference : between right and wrong;... |
| If it is put in this sense,-Did the pannel know that murder is a crime?... | : when put generally, and : in the abstract* |
| is hardly to be reputed a just criterion... | : is not, as we conceive, : so accurate* |
| But if the question is put in another and a more special sense, | : as when put |
| as relative to | : with reference to |
| the act done by the pannel, and his knowledge of.. the evil of what he did.." | : the party's knowledge of : right and wrong in respect : to the very act with which : he is charged". |

TABLE NO. 8
(continued)

Hume's "Commentaries" : McNaghten Answer No. 2 & 3

| | |
|---|--|
| <p>"Was he impressed with the consciousness of guilt and fear of punishment?-- it is then a pertinent and a material question but one which cannot be rightly answered, with- out taking into con- sideration the whole circumstances of the situation. It is there- fore only in this special sense, as relative to the par- ticular thing done, and the condition of the man's belief and consciousness on that occasion, that an inquiry concerning his intelligence of moral good or evil seems to be material to the issue of: his trial".</p> | <p>: "If the accused was : conscious : that the act was contrary to the law of the land : he is punishable; : and the usual course, there- fore, has been to leave the question : to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think, is correct, ac- panied with such observations and explana- tions as the circumstances of each particular case may require".</p> |
|---|--|

----- : -----

* These two phrases have been transposed to better illustrate the similarity of development. In the original form the phrases read: "... is not, as we conceive, so accurate when put generally, and in the abstract...". Otherwise, however, the precise order of exposition has been maintained in each case.

Conclusions: Evaluation, Scope and Authority

It must be admitted that the Rules constituted no model in clarity of exposition. They raised all manner of questions that less repetition and a simple word added at the right place might have resolved, forever. They might have been more explicit concerning: partial insanity; the mistake-of-fact delusion test; whether a moral or legal standard, or both, were meant for the knowledge test; to what extent the Rules were intended as a complete or incomplete exposition of law; what other tests had been considered and rejected, or whether only what was expressed had been considered; to what extent they felt themselves bound by the facts of the McNaghten trial; and subsidiary aspects of these questions. These problems all call for evaluation, and themselves constitute a framework for evaluating the Rules.

The lack of clarity of the Rules has met with repeated, sharp condemnation. Stephen called

them "vague and confusing"¹ . Wharton regarded them as unhappily unique in that "There probably never "was a series of questions embodying one single "point of inquiry clothed in such redundancy and "reiteration"² . Weihofen thought both the questions and answers were "befogged by verbosity"³ . Barnes summed the matter up recently by observing that "it is not easy, taking the first three Answers "together, to see what the judges meant"⁴ .

What the Judges said, in the three answers they provided for the first four questions, may be reduced to essentially the following form:

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1. Stephen, Hist. Crim. Law of Eng., Vol. II. p.154.
 2. Wharton and Stille, Med. Jur., (5th ed., 1905) Vol. I, p. 543. Professor Wharton regarded the point at issue as simply: "What was the English law, in 1843, concerning delusional lunatics who committed crimes under the influence of their delusion?"
 3. Weihofen, Insanity As A Defense in Criminal Law (1933) p. 30. He pointed out that "It is difficult to determine just what the judges meant to say because of the number of times they said it".
 4. Barnes, A Century of the McNaghten Rules in VIII Camb. Law Journal, p. 304.

General Defence of Insanity:
(Particularized Knowledge Test) required:

1. At the time of the act,
2. And with specific reference to the particular act, accused
3. Did not know the nature and quality of the act,
4. Or, did not know that the act was wrong,
5. As a result of a defect of reason,
6. From disease of the mind.

Defence of Insanity With Respect to Delusion:

1. At the time of the act, and
2. With causal reference to the particular act, accused
3. Laboured under specific delusions,
4. Partial delusions being sufficient (i.e., affecting only some one or few subjects or persons, but in other respects sane)
5. Resulting in lack of knowledge that the act was "contrary to ... the law of the land",
6. Or, resulting in a belief, which,
 - a. Had it been true (i.e., for purposes of the legal test, treating the deluded belief as an actuality).
 - b. Would have justified or excused his act (i.e., treating the delusion as a "mistake-of-fact").

The first rule, or the general defence using the particularized knowledge test, was broad enough to apply "in all cases", including delusion. The second rule, respecting delusion, was apparently meant as supplemental.

What the knowledge test did not make clear was the nature of the standard of "wrong". Was it a legal or moral idea of wrong, or both, that could be used? The same problem arose when the knowledge test was applied specially to delusions. Did "contrary to ... the law of the land" mean only a legal standard, or did it cover more? And finally, was the knowledge test, as applied to delusion, to have one standard of reference while the knowledge test, applied generally, had another? The last question was the simplest to resolve. If the first rule (particularized knowledge test) was to be given as a charge "in all cases", as the Judges said, then only one standard could have been meant, whether the case was one of delusion or not.

It seems most likely that the Judges meant both a moral and a legal standard, with either sufficient. Mr. Justice Cardozo of the United

States Supreme Court (then Chief Justice of the New York Court of Appeals) gave part of the answer in 1915. He reasoned that the moral standard could not have been intended to be omitted, because "the Judges expressly held that a defendant who knew nothing of the law would nonetheless be responsible if he knew the act was wrong by which, therefore, they must have meant, if he knew that it was¹ morally wrong" .

At an even earlier date, Stephen in his history of English criminal law had come to the conclusion² that by "wrong" was meant illegal, or³ morally wrong. More recently Barnes has added another accord with this view.

From the analysis made of English case law in the pre-McNaghten period, it appeared that not only was a moral standard then known, but that

1. People v. Schmidt (1915) 216 N.Y. 324, 110 N.E. 945.

2. Stephen, Hist. of Crim. Law. in Eng. Vol. II, p. 149; Digest of the Criminal Law, s. 38 (b), and note 6.

3. Barnes, A Century of the McNaghten Rules, in VIII Cambridge Law Journal, p. 303.

it preceded the meaning "illegal"; and eventually¹ both were used together . On the whole, therefore, it would seem that illegal or morally wrong constituted the meaning of wrong in the McNaghten Rules, when the answers were promulgated.

The delusion test was unquestionably the weakest and most poorly stated part of the Rules. In the first place, it was on a par with the fallacious medical theory of monomania in that it countenanced "partial delusion". As a legal doctrine, partial delusion probably owed more to the immense influence of Hale than anyone else. Of the two meanings that Hale gave to partial insanity, the McNaghten Rules embodied the scientifically unsound one in "partial delusion"² . This propogation of the idea that an individual might be sane on one topic, or with respect to one person, while otherwise perfectly sane, has been overthrown by modern medicine which conceives of the mind

1. Chapter IV, supra.

2. East, Intro. to Forensic Psychiatry, p. 58, "There is not, and there never has been, a person who labours under partial delusion only, and is not in other respects insane".

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functioning as a whole . The amount of damage done by the McNaghten concept of partial delusion was not as extensive as might have been expected, however. Most post-McNaghten jurisdictions have simply ignored the delusion test and have charged the jury in terms of the knowledge test, as will be indicated more fully in subsequent chapters.

The second exceedingly weak aspect of the delusion test was what has been called its mistake-of-fact application. The Rules made delusion a defence, if the delusion resulted in a belief of the existence of a state of things which, if it actually had existed, would have justified or excused his act. In effect, this meant that the individual had to behave in a sane manner when he acted on his insane delusion, or he would be held responsible. The absurdity of such a view accounts in part for its relative neglect in subsequent law. Even more important, perhaps, was the fact that few

1. British Medical Journal, Feb. 16, 1924: "The theory of partial or limited insanity is untenable, the mind functions as a whole and is disturbed as a whole".

defence counsel would willingly assume the burden of so self-contradictory a test.

There has been some support for the position of the Rules respecting mistake-of-fact delusion. Lord Hewart of Bury put it that "after "all the mere fact that a man thinks he is John "the Baptist does not entitle him to shoot his "mother"¹ . However, as Barnes pointed out, "No,² "but it might if he had mistaken her for Herodias"² . The gist of the difficulty was enunciated by Stephen: "there may be a connection between the delusion and "the crime as insane as the delusion itself"³ .

In substance, mistake-of-fact delusion stood for the proposition that only a reasonable course of action based on an unreasonable premise (delusion) would excuse, while unreasonable actions flowing from unreasonable premises would not. This test, as will be indicated in subsequent chapters,

1. Hewart, Essays, op. cit., p. 224.

2. Barnes, Century of McNaghten Rules, op. cit., p. 304.

3. Stephen, Hist., op. cit., Vol. II, p. 162.

has tended to shrivel and has little effect in modern law.

Another troublesome aspect of the Rules was the question of their intended scope. Were they conceived as a complete statement of the substantive legal test or tests for insanity, or were their objectives more limited?

A respectable body of opinion has held that the Rules were not intended as a complete statement of law. The reasoning behind this view has generally been that the Judges were answering specific questions framed with a specific case in mind, and that their answers could not be taken beyond the operative facts of that case. Actually, this involves two questions: completeness or scope on the one hand, and binding authority, or lack of it, on the other. At the moment, scope only will be considered.

Stephen concluded that "the answers can¹ hardly have been meant to be exhaustive" . Mercier

1. Stephen, Hist. Crim. Law, op. cit., Vol. II, p. 159.

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agreed with this view . Professor Glueck, of Harvard, observed in words that sum up the argument of limitation in scope, that "The questions asked "the judges were circumscribed and were intended "to cover only the psychoses in which delusional "manifestations are the more striking symptoms, "especially paranoia; moreover, the judges knew "quite well that the questions referred to the case "of M'Naghten, a paranoiac with an apparently more "or less circumscribed delusional system. Hence the "extension of the tests to cases of mental disorder "which were not dreamed of in the judges' philosophy "is unwarranted, even if the legal authoritativeness² "of the answers be granted" .

With due respect to these authorities, it is submitted that their reasoning is demonstrably erroneous. That reasoning is in light of modern

1. Mercier, Criminal Responsibility (1926), Chap. viii.

2. Glueck, Mental Disorder and Crim. Law, op. cit., p. 166. To disagree with Professor Glueck's analysis is, in more ways than one, a case of pupil disagreeing with master, since the present writer was a student of Professor Glueck in criminal law at the Harvard Law School, 1940-41.

thinking rather than conditions as they prevailed in 1843. Today we see the McNaghten case as a problem whose crux was delusion. It must be admitted that both the defence counsel and the medical witnesses in McNaghten's trial also so regarded it. But it must not be forgotten that both the defence counsel and the physicians also talked in terms of irresistible impulse. Furthermore, the prosecution, and even more important the presiding Judges at the trial, talked in terms of the knowledge test. Finally, the three trial Judges were amongst the fifteen Judges who sat to consider the Rules and among the fourteen who approved the Rules. If, therefore, the authors of the Rules confined themselves only to McNaghten's trial, they would still have had to consider not only delusion, but irresistible impulse and the knowledge test. There was nothing else in all of contemporary law on the subject, and hence to consider these factors was to consider the law in full extent.

Nor do the questions themselves take a completely narrow range. If delusion were the only problem that the Lord Chancellor had in mind, he had no need for Question No. 3. It must be admitted,

however, that if the criticism of limitation of scope were applied only to the questions, a case might well be established. It does not follow, however, that the answers given by the Judges were as narrow as the questions put to them, assuming every limitation on the questions.

The answers themselves, whatever their faults, were broadly conceived. The knowledge test was to be given to the jury "in all cases". Answer No. 2 and 3 concluded with the observation that the knowledge test was to be "accompanied with such "observations and explanations as the circumstances "of each particular case may require". What need could there have been for such a caution if only a fact situation such as the McNaghten one were being alluded to? On the whole, the answers as framed indicated a wider application than the operative facts of the trial.

Mr. Justice Maule's refusal to follow his judicial colleagues helps affirm the completeness of the Rules. His first reason for objection was that there was "no particular case ... which "might explain or limit the generality of their

"terms". On that ground, among others, he had hoped "my learned brethren would have joined me in "praying your Lordships to excuse us from answering "these questions". The only test for criminal responsibility set up by Mr. Justice Maule was the knowledge test¹. It could no more be concluded from that fact that Mr. Justice Maule had not considered delusion and irresistible impulse, or the law generally, than it may be concluded the other fourteen Judges failed to consider a point of law simply because they did not mention it.

Finally, it is submitted that Lord Wensleydale spoke for his judicial colleagues as well as for himself when, as Oppenheimer pointed out: "Lord Wensleydale, who as Mr. Baron Park, had "taken part in formulating (the Rules) in his reply "to Mr. Waddington's question before the Royal "commission on Capital Punishment, 1875, clearly "stated that the answers were meant to be a full

1. (1843) 10 Clark & Fin. 205. "To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as rendered him incapable of knowing right from wrong".

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"exposition of the law" .

The problem of the authority of the Rules was, to some extent, bound up with the question of their scope. The problem arose from the fact that the Rules were neither a charge nor an opinion in the strict sense of the law. There can be no doubt that when formulated they were not binding to the degree of precedent. But their persuasive effect was enormous. The question, therefore, quickly lost meaning as case after case in England, the United States and even occasionally in Scotland, incorporated the Rules. This subsequent ratification by adoption has given the Rules any element of binding force they may originally have lacked.

The most important single criticism of the Rules was their failure to incorporate any means for treating problems of conation and emotion in addition to problems of cognition. The same criticism may be made of much of Anglo-American law today, of course. But it was the McNaghten

1. Oppenheimer, *Crim. Resp. of Lunatics*, op. cit., p. 25.

Rules that froze the law to such an extent that the ordinary processes of common law development were able to add almost nothing to what was already there. Whether irresistible impulse is, or is not, an adequate means of bringing conation and emotion within the exculpatory framework of an insanity defence, the McNaghten rejection of irresistible impulse had one very important effect. It destroyed the only means available in 1843 for enlarging the English law's cognitive concept of non-responsibility. That meant that subsequent English law, under the weight of the McNaghten Rules, could not develop alternative means for achieving this end (within the common law method). It also meant that even those American jurisdictions that adopted irresistible impulse never carried it very far. The doctrine today has thus become one of very limited practicality. It is submitted, however, that it was not lack of reflection upon irresistible impulse that left it outside the McNaghten Rules, but deliberate rejection. Fifteen Judges of long experience sat for more than three months in deliberation upon this problem, and the final result was a seriously and carefully considered one, whatever faults it may possess.

CHAPTER IX

THE BASIC CONCEPTS: McNAGHTEN VARIATIONS

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|---|-----|
| England And The McNaghten Rules | 358 |
| England And The Objective Moral Standard | 361 |
| England And The Physical Interpretation Of Quality | 364 |
| England: Time Of The Act And Temporary Insanity | 366 |
| England: Partial Insanity And Delusion | 370 |
| The United States And The McNaghten Rules | 377 |
| American Variations Of The Prerequisite Mental Condition | 378 |
| American Variations With Respect To Particularity In The McNaghten Rules | 382 |
| American Variations Of The Knowledge Test: The Double Category And Sub-Classes | 390 |
| American Variations Of The Knowledge Test: The Single Category And Sub-Classes | 401 |
| American Interpretations Of Wrong | 414 |
| American Interpretations Of Delusion | 420 |
| The New Hampshire Rule As Fundamental Concept | 429 |
| American Summation | 431 |
| Scotland And The McNaghten Rules | 431 |
| Scotland's Exculpatory Standard At Trial | 435 |
| Scotland And Insanity In Bar Of Trial | 444 |
| Conclusions And Recommendations | 450 |

The basic concepts of the legal attitude toward mental abnormality have centered about the knowledge test. Historically, this may be regarded as true for Scotland as well as England and the United States. In the modern period it is more particularly true of English and American thinking. Since the modern knowledge test in the latter jurisdictions stemmed from the McNaghten Rules, delusion may also be considered a basic concept even though its position has deteriorated as a test of legal importance. In Scotland, not bound to a rigid McNaghten formula, there has been a common law development beyond the McNaghten Rules. A consideration of "basic concepts" in Scotland, England and the United States will, therefore, primarily involve the defence of insanity to elude conviction, or in bar of sentence.

In both England and the United States the question of insanity is raised and considered most frequently at the stage of defence to elude conviction in actual course of trial. In that sense, the insanity defence is basic or fundamental in both those places. In Scotland, today, the incidence of cases involving an insanity defence to elude

conviction (as distinguished from insanity in bar of trial and insanity in terms of diminished responsibility) is extremely low. Lord Cooper has pointed out that such a case "arises rarely and¹ "has never arisen in my own experience" . In that sense, the insanity defence is not fundamental in Scotland. But conceptually and historically, as well as in general incidence in the English-speaking world, the tests of insanity to elude conviction are fundamental, and hence will be considered together despite the important Scottish difference.

England and The McNaghten Rules

The present legal attitude toward mental abnormality in England is often stated in such a manner that it seems to consist of the McNaghten Rules alone. Such statements also tend to leave a residual assumption that the Rules are applied in toto. Thus an outstanding legal scholar, Dr. Stallybrass, observed that, "The law of England

1. Testimony before Royal Commission on Capital Punishment. Minutes of Evidence (4 April, 1950) page 438, par. 5475.

"on this subject is contained in the(McNaghten
"Rules) these rules formulated in 1843 still
"remain the law of England"¹ . He then summarized
the Rules including Answers No. 1 and No. 4 dealing
with delusion. There are latent perils in such
generalization.

In practical day by day application one
branch of the McNaghten Rules, the general defence
of the particularized knowledge test, bears the
burden of constant usage, while the other branch
of the Rules, the delusion test or tests, bears
little or no weight in use. As a general pattern,
it has been noted that "the Courts are inclined to
"ignore Answer No. 4, largely ignore Answer No. 1,
"and sum up to the jury under Answer No. 2 in all
"cases"² .

1. Stallybrass, A Comparison of the General
Principles of Criminal Law In England With The
"Progetto Definitivo Di Un Nuovo Codice Penale" of
Alfredo Rocco, in IV Eng. Studies In Criminal Science:
The Modern Approach To Criminal Law (Eng. 1948)
pp. 414, 415.

2. Barnes, Century of the McNaghten Rules, op.cit.,
p. 305.

The judicial charge to the jury in England today may be said to have these constant components: the law on the subject is said to be the McNaghten formulation; the particularized knowledge test is given as the content of that formulation; and delusion is either not mentioned at all, or treated as a symptom rather than a test. The charge, of course, also contains instructions on other matters such as the presumption of sanity and the risk of non-persuasion, but with respect to the exculpatory test the usual features are those above mentioned. Mr. Justice Darling's statement in *R. v. John William Smith* was typical: "The law on "this matter is perfectly well known The "question is whether this man was prevented by "disease of the mind from knowing the nature and "quality of the act he was doing, and further was "capable or not of knowing whether it was right "or wrong. If he were incapable of knowing whether "the act he did was right or wrong, then he comes

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"within McNaghten's case" .

The difficulty with even so apparently simple and uncontroverted a statement was pointed out by the same authority in R. v. Meade, some years later. Mr. Justice Darling observed in the Meade case that "it is necessary to repeat what has often been said before in this Court, namely, that when a judge sums up to a jury he must not be taken to² be indicating a treatise on the law" .

England and the Objective Moral Standard

Under the circumstances, those aspects of the McNaghten knowledge test that have received judicial review, require exposition. Just thirteen

1. (1910) 5 Cr. App. R. 77. In greater or in lesser detail the same language may be found in almost every case. R. v. Marsland (1911) 7 Cr. App. R. 77; R. v. Flavel (1926) 19 Cr. App. R. 141. The directions to the jury in R. v. P.C. Anderson given by the then Lord Chief Justice, Lord Hewart, at the Sussex Winter Assize in 1935, gave an idea of how detailed and careful such a charge could be, but the essence remained as Mr. Justice Darling had put it in the Smith Case.

2. (1909) 2 Cr. App. R. 54; 1 K.B. 895; 78 L.J.K.B. 476.

years after McNaghten, Baron Bramwell explained "wrong" to mean "doing an act prohibited by law; "because a man might imagine that killing was a right¹ "thing to do, and it might be contrary to law" . The matter was finally considered by the Court of Criminal Appeal in R. v. Codere² . Lord Reading's opinion in that case did not fully clarify the situation, however. The Chief Justice made it quite plain that the "standard to be applied" was that "ordinary standard adopted by reasonable men" in deciding whether an act was wrong. On this point there could be no doubt, for should a purely subjective standard be used, it "would tend to "weaken the law to an alarming degree".

But the opinion also said, "Once it is "clear that the appellant knew that the act was "wrong in law, then he was doing an act he was "conscious he ought not to do, and as it was against "the law, it was punishable by law". This seemed to

1. R. v. Dove (1856) The Times, 21 July, 1856.

2. (1916) 12 Cr. App. R. 21.

suggest a legal standard and introduced a phrase that brought with it more problems than it solved - "conscious that the act was one which he ought not to do". The Chief Justice himself recognized this to some extent when he spoke of the "difficulty" of the phrase. He went on to examine the phrase in light of the McNaghten Rules and concluded that "if it is punishable by law it is an act which he ought not to do".

Nonetheless, it is submitted that an objective moral standard of "wrong" was meant by Codere, in addition to the purely legal standard. There was no point in establishing an objective standard such as that "adopted by reasonable men", if "wrong" simply and exclusively meant illegal. It required no reference to the thinking of ordinary reasonable men to determine legality or illegality. A moral element must therefore have been involved; the significance of the decision lay in making that moral standard an objective one, rather than subjective. On slightly different analytical grounds both Radzinowicz and Turner of Cambridge reached essentially the same conclusion, namely - that

Codere laid down an "objective test of moral blame"¹.

England and the Physical Interpretation of "Quality"

Codere resolved another difficulty in a straightforward manner. The words "nature and "quality of the act" had given rise to a certain amount of misapprehension. It was argued that "nature" referred to the physical aspect of the act while "quality" signified a moral aspect. Thus in R. v. Hay, the official report of the finding was that the accused "knew the nature of the act, but "he did not know the quality of it"². Hay had been indicted for shooting with intent to kill; his own explanation was that he wanted the full knowledge that comes from experiencing every sensation and had thus decided to obtain the experience of inflicting death. Clearly he knew the physical quality as well as the physical nature of the act.

1. Radzinowicz and Turner, Editorial Note in II Eng. Studies in Criminal Science: Mental Abnormality and Crime (1944) p. xii, and Turner, Mental Element In Crimes At Law in IV Eng. Studies in Crim. Science: The Modern Approach To Criminal Law (1948) p. 223.

2. (1911) 22 Cox 268; 155 O.B. Sess. Prs. 337.

While the issue was somewhat clouded by Darling J's direction admitting irresistible impulse as a defence, the finding indicated an understanding of "quality" in moral terms.

Codere settled the matter explicitly. The Lord Chief Justice observed that, "The Court "is of opinion that in using the language 'nature "'and quality', the judges were only dealing with "the physical character of the act, and were not "intending to distinguish between the physical and "moral aspects of the act"¹ .

In R. v. Pank both of the Codere rulings² showed their effect . With respect to "wrong" an objective standard was applied: "If he knew that his "act was wrong in ordinary circumstances it is no "defence that he thought that the special circum- "stances present in this particular case would "render it justifiable in him to do the act". With respect to the "nature and quality of the act",

1. R. v. Codere, (1916) 12 Cr. App. R. 21, at 26,27.

2. Times, 22 May, 1919.

Pank was said to have had that knowledge since "he "knew that he was shooting, and that this shooting "would kill her". The word "quality" interpreted in physical terms, as Codere commanded, referred to the physical consequences of the act.

England: Time of the Act and Temporary Insanity

As an exculpatory defence, the knowledge test was required by the McNaghten Rules to be applied with reference to the critical moment "of the committing of the act". Subsequent cases followed the same pattern. In R. v. Stokes, five years after the McNaghten Rules, the time of committing the offence charged "was said to be ¹ "determinative" ; in R. v. Jefferson, more than half a century later, it was still "the time he ² "committed the offence" that ruled . In judging state of mind at the critical moment, the jury has been directed to look at the evidence before and after the act. The weight of the evidence has been

1. (1848) 3 Carr. & Kir. 185.

2. (1908) 1 Cr. App. R. 97.

regarded as increased the closer it came to the moment of the act, as R. v. John William Smith¹ indicated. On the other hand, R. v. Collins showed that it was still a jury matter, even though no evidence of mental abnormality existed immediately² before or after the act. A general state of mental illness was looked upon as insufficient unless its manifestations or effects could be related to the time of the act. Thus in R. v. Perry, an epileptic was required to show that he was suffering from an³ active state of the disease when he did the act.

1. (1910) 5 Cr. App. R. 77. The Court instructed that: "as to his state of mind at the time of doing the act, you are to look at the evidence before and after the act, and throughout the commission of the act". However, with respect to the defence argument that "the state of appellant's mind weeks before" be taken into account, the Court observed that "it is not a reason that because he might have been insane then, he is therefore insane later on ...".

2. (1911) 6 Cr. App. R. 193. The Court observed that "The medical officer who had the prisoner under observation agreed that he had known cases where a person committed a terrible crime who was perfectly sane shortly before committing it, and the same shortly after the deed was done".

3. (1919) 14 Cr. App. R. 48. The Lord Chief Justice said, "The Court has had further evidence, especially in the prison records, of his having had attacks of epilepsy. But to establish that is only one step; it must be shown that the man was suffering from an epileptic seizure at the time when he committed the murder...".

Both mental illness and that defect of reason flowing from it and established by the knowledge test had to be related to the critical time of acting, if the defence was to prevail.

From the McNaghten language, and the subsequent cases concerning abnormality at the time of the act, as well as the historical references to lunacy and lucid intervals, it should have been clear that temporary insanity was a sufficient defence, provided that it was related to the critical moment. Collateral issues obscured early thinking on the subject, however.

In the quarter century before McNaghten,
1 2
R. v. Burrows and R. v. Rennie had ruled that drunkenness could not excuse unless a lasting insanity were produced. As understanding of drunkenness increased it came to be realized that "drunkenness is one thing and the diseases to which drunkenness leads are different things"³. Thus in the

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1. (1823) 1 Lewin 75.
 2. (1825) 1 Lewin 76.
 3. R. v. Davis (1881) 14 Cox 306.

nineteenth century post-McNaghten period, R. v. Davis¹ and R. v. Baines¹ both affirmed temporary insanity as a possible defence, which the jury could accept or reject on the evidence, where drunkenness had led to delirium tremens. At a much later date, Director² of Public Prosecutions v. Beard was to reaffirm temporary insanity, and quote R. v. Davis with approval.

But in R. v. Harding³, early in the twentieth century, the view was taken that "temporary insanity is not known in English law". This result seemed to stem not from general principles nor even from any analogy with the early drunkenness decisions, but rather from an effort to mitigate the harsh results of the English law respecting infanticide in the days before the Infanticide Acts of 1922 and 1938. The anomalous situation noted by the trial judge was that if the accused were found guilty of murder she would suffer a substituted shorter

1. (1886) Times, 25 January, 1886.

2. (1920) 14 Cr. App. R. (H.L.) 159; 36 Times L.R. 379.

3. (1908) 1 Cr. App. R. 219; 25 Times L.R. 139.

sentence of imprisonment than the "very long" confinement she might expect in a criminal lunatic asylum. Thus it was to her disadvantage to have the defence of temporary insanity open to her, since juries during the half century before the Infanticide Acts were especially sympathetic to the defence in such cases. Whether these facts account for the denial of temporary insanity must remain conjectural, but there would seem to be an inner plausibility in the view advanced. In any event, Harding must be regarded as contrary to principle on this point.

England: Partial Insanity and Delusion

The criminal law view of partial insanity (in the monomania sense) was not the same as that of the civil law in England. Thus five years after McNaghten, English civil law was expressing the view that "mind is one and indivisible". Lord Brougham,¹ in *Waring v. Waring*, added that, "We cannot, therefore, in any correctness of language, speak of

1. (1848) 6 Moo. P.C. 341; 13 Eng. Rep. (Pr. Co.) 715.

"general and partial insanity". He then stated what is regarded as the modern medico-legal attitude, "If the being or essence which we term the mind is "unsound on one subject it is quite erroneous "to suppose such a mind really sound upon other "subjects". To this understanding there was appended one limiting qualification: "provided that "unsoundness is at all times existing upon that "subject". The civil law had not been subjected to the pressure respecting monomania that had characterized criminal law from Coke and Hale on through case after case. Hence the civil law was freer to develop and maintain the common sense view that insanity on one subject affected other subjects as well. But the kind of medical thinking that had existed only five years earlier in the McNaghten case had not yet passed from the courtroom. The result was that even the relatively free development of civil law attitude was limited by a medically induced sense of caution to the least doubtful case, i.e., permanent insanity.

Somewhat analagous thinking could be glimpsed occasionally, and in very much lesser degree, in criminal law, even during the immediate

post-McNaghten period. Whether it was the few civil law examples, or the same inducing factors as had operated in civil law, must remain conjectural.

But in R. v. Layton¹, only a year after Waring and six years after McNaghten, a hint of future development could be found. Baron Rolfe there ruled that insanity on one point might be used by the jury to form a conclusion as to insanity on another point². This was not a denial of partial insanity in the monomania sense. Nonetheless, it constituted an indirect attack upon it and pointed to a weakening of the concept.

Accompanying this tendency as a necessary corollary was another trend. Delusion began to be regarded not as insanity per se (albeit partial insanity) but rather as a symptom of insanity. This meant that delusion was open to more question. It had to be carefully distinguished, for example, from eccentricity or merely extravagant behaviour.

1. (1849) 4 Cox. 149.

2. The Court said, "Indeed, his insanity on that might guide them to a conclusion as to his insanity on the point involved in this case".

It also meant that delusion had begun to lose its McNaghten vitality and importance. The bulk of the transition was crowded in the years immediately after the McNaghten Rules, before the Rules had acquired their sacrosanct aura by cumulative weight of repetition.

Yet five years after McNaghten, Baron Parke still flatly stated in R. v. Burton ¹ that while circumstances such as lack of regret, lack of attempt to escape, desire to commit suicide, ought to be considered, nonetheless, "it was difficult to "see how they could establish the plea of insanity "in a case where there was a total absence of "delusion". Delusion, in other words, was not merely part of the evidence of mental disease, it was the sine qua non. A year later, in R. v. Layton, ² Baron Rolfe equated "labouring under a delusion as "to his property" with "insane on one point only". At the same time, however, he permitted the jury to draw conclusions from this "one point" of insanity

1. (1848) 3 Cox. 275.

2. (1849) 4 Cox. 149.

where delusion existed to another "point involved
"in this case", i.e., was he "incapable of understand-
"ing the wickedness of murdering his wife".

By 1863, just twenty years after McNaghten,
the situation had changed significantly in terms of
application of the delusion concept. In R. v.
¹
Burton the Court pointed out that "other witnesses
"deposed to his 'vacancy of mind', and strange ways.
"He had been known to eat a piece of soap and a
"piece of cat, and to bite a candle On other
"occasions, however, he seemed sensible enough".
No longer did the charge stress delusion above
everything else combined. All circumstances were
to be considered, and delusion was not given dis-
proportionate weight. The Court observed that
"there are instances in which a plea of insanity
"may properly be allowed, although no such delusion
²
"can be proved" . In the same year, in R. v. Townley,³

1. (1863) 3 F. & F. 772.

2. Byles J. also stressed that "Even morbid delusions
cannot always be allowed to screen a criminal from
the consequences of his own acts ...".

3. (1863) 3 F. & F. 839.

Baron Martin drew a distinction between delusion and mere oddness or eccentricity. The significance of the distinction lay in the fact that twenty years earlier it would not have been made; what Baron Martin regarded as clearly not a delusion would not have been so characterized at the time of McNaghten. Baron Martin observed: "The prisoner "claimed to exercise the same power over a wife as "he could lawfully exercise over a chattel but that "was not a delusion or like a delusion. It was the "conclusion of a man who had arrived at results "different from those generally arrived at and "contrary to the laws of God and man but it was "no delusion".

The present position concerning delusion¹ was stated in R. v. Gilbert : "Two defences appear "to me to have been possible: (1) That the delusion "was that he was committing the act in self defence. "(2) That delusions are evidence of general insanity." It is submitted that delusion is largely confined in its practical application in England to these

1. (1914) 11 Cr. App. R. 23; 112 Law Times R. 479.

two spheres; and that of the two the second is much the more frequent usage. The reasons lay partly in the discredited medico-legal concept of partial insanity (monomania), and partly in the concomitant shift in applying delusion in directions to the jury. Defence counsel are not apt to take refuge in so uncertain a test unless it be in the least doubtful area: - delusion of self defence. The latter tends to persist mainly, it is suggested, because it accords with general principles of mens rea and mistake-of-fact¹; and despite, rather than because of, the mistake-of-fact delusion test of the McNaghten Rules. The McNaghten Rules still remain the explicitly recognized source, however. In most instances delusion becomes important only as evidence

1. As was pointed out in R. v. Tolson (1889) 23 Q.B.D. 168, 181: "At common law an honest and reasonable belief in the existence of circumstances, which if true would make the act for which a prisoner is indicted an innocent act, has always been held to be a good defence. This doctrine is embodied in the somewhat uncouth maxim: 'actus non facit reum nisi sit rea'. Honest and reasonable mistake stands in fact on the same footing as absence of the reasoning faculty, as in infancy, or perversion of that faculty, as in lunacy".

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of the mental disease which is prerequisite for application of the McNaghten knowledge test.

The United States and The McNaghten Rules

The McNaghten knowledge test is the dominant determinant of criminal responsibility in the United States. Only one state has clearly² abjured it. Twenty-four states use it essentially³ as their common law defence to elude conviction. Five states take the same position by virtue of statutes that simply codify the English common-law⁴ position. Fourteen states use the McNaghten knowledge test but amplify it by an irresistible

1. As far back as 1862, Erle, C.J. had summed up by saying, "there were before the act in question delusions of the senses, which medical men consider, and might well consider, symptoms of insanity". R. v. Law (1862) 2 F. & F. 836.

2. New Hampshire.

3. Arizona, California, Florida, Georgia, Idaho, Iowa, Kansas, Maine, Maryland, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Washington, West Virginia and Wisconsin.

4. Minnesota, New York, North Dakota, Oklahoma and South Dakota.

1
impulse test as well . Three more states use the
McNaghten knowledge test, but it is more doubtful
2
whether irresistible impulse applies as well . The
District of Columbia belongs within the McNaghten
plus irresistible impulse category, and in federal
cases outside the District of Columbia the U.S.
Supreme Court has apparently adopted the same view.
One state has remained relatively silent on the
3
question .

American Variations Of The Prerequisite Mental Condition

The mental condition laid down in the
McNaghten Rules as "defect of reason from disease
"of the mind" has been expressed in a number of
alternative forms in the United States. The U.S.
Supreme Court talked of "a perverted and deranged

1. Alabama, Arkansas, Colorado, Connecticut,
Delaware, Illinois, Indiana, Kentucky, Michigan,
Montana, Ohio, Vermont, Virginia and Wyoming.

2. Louisiana, Massachusetts and New Mexico.

3. Rhode Island. The knowledge test was used in
a charge, but the Supreme Court declined to pass on
it as not in issue. State v. Quigley (1904) 26 R.I.
263, 270; 58 Atl. 905.

"condition of the mental and moral faculties" which involved something more than the intellectual infirmity of the Rules, and served as the groundwork for irresistible impulse as well as the knowledge¹ test. Alabama inquired whether the accused was "afflicted with a disease of the mind, so as to be² "either idiotic, or otherwise insane". Again, this broader statement served to support irresistible impulse as well as the knowledge test. The other irresistible impulse states all tended toward a similar wide concept of mental disease for the same reason. Occasionally language that at first appeared no broader than that of the Rules was interpreted widely enough to support irresistible impulse. Massachusetts was a case in point. The

1. Davis v. U.S. (1895) 160 U.S. 469, 16 Sup. Ct. 353. To the same effect are Davis v. U.S. (1897) 165 U.S. 373; 17 Sup. Ct. 360 and Matheson v. U.S. (1912) 227 U.S. 540; 33 Sup. Ct. 355.

2. Parsons v. State (1886) 81 Ala. 577, 2 So. 854 may be considered the leading case on the subject in Alabama. Subsequent important cases following the view of Judge Somerville in the Parsons case were Parrish v. State (1903) 139 Ala. 16, 50, 36 So. 1012; Granberry v. State (1913) 182 Ala. 4, 62 So. 52; Lambert v. State (1922) 207 Ala. 190, 92 So. 265; and Manning v. State (1928) 217 Ala. 357, 116 So. 360.

leading case, Commonwealth v. Rogers (1844) 7 Metc. 500, contained a charge by Chief Justice Shaw inquiring simply whether "the mind of the accused "was in a diseased and unsound state". More typical of an irresistible impulse state's formulation was Vermont which spoke of "mental and moral faculties... "disordered and deranged". Doherty v. State (1901) 73 Vt. 380, 50 Atl. 1113 and State v. Kelsie (1919) 93 Vt. 450, 108 Atl. 391.

The state that did not admit irresistible impulse as a defence did not need as broad a definition of prerequisite mental condition. Usually the McNaghten statement "defect of reason from "disease of the mind" was considered sufficient, or something largely equivalent was adopted. New York simply used "defect of reason" in its statutory language. Cahill's Consol. Laws. (1923) Chap. 41, Sec. 1120. But this was no more than a codification of its own common law language as indicated by People v. Kleim (1845) Edm. Sel. Cas. 13 and other

¹
cases . Furthermore, People v. Carlin (1909) 194
N.Y. 448, 87 N.E. 805 made it plain that "defect
"of reason" meant "disease of the mind", and that
it was necessary for the accused "at the time of
"the commission of the act (to have been) suffering
"from disease of the mind". Oregon varied the form
slightly by speaking of "insanity ... such as
"dethrones reason". State v. Lauth (1905) 46 Ore.
342, 80 Pac. 660. Occasionally a state within this
group adopted a broader concept of mental abnormality.
Wisconsin, for example, made "a perverted condition
"of the mental and moral faculties" its prerequisite.
Oehler v. State (1930) 202 Wis. 530, 232 N.W. 866.
This not only could support irresistible impulse,
but apparently was a relic from an earlier Oregon
period when the cases had seemed to approve
²
irresistible impulse . On the whole, it is

1. Freeman v. People (1847) 4 Denio 9; People v.
Pine (1848) 2 Barb. 566; Willis v. People (1865)
32 N.Y. 715; and Cole's Trial (1868) 7 Abb. Prac. 321.

2. See Bennett v. State (1883) 57 Wis. 69, 14 N.W.
912 and Butler v. State (1899) 102 Wis. 364, 78 N.W.
590. But irresistible impulse was explicitly
rejected in Osborn v. State (1910) 143 Wis. 249,
126 N.W. 737.

submitted that the McNaghten prerequisite, "defect
"of reason from disease of the mind" may be regarded
as essentially equivalent to the prerequisite
mental condition required in the states denying
irresistible impulse¹ .

American Variations With Respect To
Particularity In The McNaghten Rules

The McNaghten Rules and the subsequent
English interpretations of them have all required
a particularized knowledge test. The knowledge of
right and wrong had to be associated with the
particular act in issue rather than crime in general.
In the United States, some jurisdictions have
explicitly affirmed the same view, others have
indicated it obliquely and some have remained silent
concerning this important aspect of the Rules.

Seven states adopted a formulation of
particularity fairly close to that of the Rules in
phraseology. These states were: California, Georgia,
Mississippi, Missouri, Nebraska, Texas and Washington.

1. And omitting New Hampshire.

This does not mean that McNaghten phraseology was invariably used, but that seemed to be the usage of preference and was employed in most instances. In other jurisdictions where some other formulation was preferred, the McNaghten phraseology appeared¹ from time to time, as well. In California, the first important case to use the McNaghten form of wording of particularity in the knowledge test was *People v. Coffman* (1864) 24 Cal. 230, 235. The same form was followed in a number of other cases², interspersed at times with variant forms³. Georgia first considered the matter in *Roberts v. State* (1847) 3 Ga. 310 and has since taken the same view⁴ in other cases. Mississippi referred its knowledge

1. Arizona, Florida, New Jersey, South Dakota, Utah and Wisconsin were notable instances.

2. *People v. Ferris* (1880) 55 Cal. 588; *People v. Ashland* (1912) 20 Cal. App. 168, 128 Pac. 798; *People v. Morisawa* (1919) 180 Cal. 148, 179 Pac. 888; *People v. McGann* (1924) 194 Cal. 688, 230 Pac. 169; *People v. Keaton* (1931) 211 Cal. 722, 296 Pac. 609.

3. *People v. Willard* (1907) 150 Cal. 543, 89 Pac. 124; *People v. Zari* (1921) 54 Cal. App. 133, 201 Pac. 345.

4. *Choice v. State* (1860) 31 Ga. 424, 475; *Flanaghan v. State* (1898) 103 Ga. 619, 625, 30 S.E. 550; *Roberts v. State* (1905) 123 Ga. 146, 162, 51 S.E. 374; *Glover v. State* (1907) 129 Ga. 717, 722, 59 S.E. 816.

test to "the time he committed the act" in Smith v. State (1909) 95 Miss. 786, 49 So. 945. Earlier cases had made the test general ¹. Missouri settled the problem in State v. Huting (1855) 21 Mo. 476 and followed that ruling with high consistency ². Nebraska took the same view in Wright v. People (1876) 4 Neb. 407, but while it followed this language in a number of cases ³, it also varied it somewhat in others ⁴. In Texas, with an unusually high total of cases, the first adoption of McNaghten language of particularity came in Carter v. State (1854) 12 Tex. 500. Twenty-five years later in Webb v. State (1879) 5 Tex. App. 596 any doubt that might have existed as to particularity was removed

1. Cunningham v. State (1879) 56 Miss. 269; Ford v. State (1896) 73 Miss. 734, 19 So. 665.

2. State v. Redemeier (1879) 71 Mo. 173; State v. Berry (1903) 179 Mo. 377, 78 S.W. 611; State v. Riddle (1912) 245 Mo. 451, 150 S.W. 1044; State v. Weagley (1920) 286 Mo. 677, 690, 228 S.W. 817; State v. Douglas (1925) 312 Mo. 373, 404, 278 S.W. 1000, 1016.

3. Anderson v. State (1889) 25 Neb. 550, 41 N.W. 357; Shannon v. State (1923) 111 Neb. 457, 463, 196 N.W. 635; Wilson v. State (1930) 120 Neb. 468, 233 N.W. 461; Torske v. State (1932) 123 Neb. 161, 242 N.W. 408.

4. Schwartz v. State (1902) 65 Neb. 196, N.W. 190; Sherman v. State (1929) 118 Neb. 84, 223 N.W. 645.

when the knowledge test was stated to apply "as to
"the particular act charged against him". While
there were instances of variation within the state,
the bulk of subsequent cases adopted the McNaghten
expression ¹. Washington put the question of particu-
larity in a very simple and effective form: "capacity
"at the time of committing the act to distinguish
"between right and wrong with reference to the act
"complained of". State v. Craig (1909) 52 Wash. 66,
100 Pac. 167. This view was followed in the relative-
ly few cases that appeared after Craig ².

Six states adopted language of particularity
somewhat similar to that of the McNaghten Rules, but
indicated that particularity less explicitly than
the Rules. These states were: New Jersey, Florida,
Tennessee, Nevada, Oregon and Maine. The leading

1. Leache v. State (1886) 22 Tex. App. 279, 3 S.W.
539; Hurst v. State (1899) 40 Tex. Crim. 378, 46 S.W.
635, 50 S.W. 719; Nugent v. State (1904) 46 Tex.
Crim. 67, 80 S.W. 84; Thomas v. State (1909) 55 Tex.
Crim. 293, 116 S.W. 600; Roberts v. State (1912) 67
Tex. Crim. 580, 150 S.W. 627; Rogers v. State (1913)
71 Tex. Crim. 149, 159 S.W. 40.

2. State v. Saffron (1927) 143 Wash. 34, 254 Pac.
463; State v. Schafer (1930) 156 Wash. 240, 286
Pac. 833.

New Jersey case, *State v. Spencer* (1846) 21 N.J.L. 196 related the knowledge test to the particular act by asking whether the accused was "conscious "that it was an act which he ought not to do".

1

Other cases took the same view . Florida adopted the common law of England by Statute, and this was interpreted as adoption of the McNaghten Rules among other things. Particularity, however, was emphasized in a form slightly different from the McNaghten words: "sufficient degree of reason to "know he was doing an act that was wrong". *Davis v. State* (1902) 44 Fla. 32, 48, 32 So. 822. Subsequent cases followed the Davis statement .

2

Tennessee utilized much the same formulation in that there had to be consciousness that the act was wrong and would lead to punishment. *Stuart v. State* (1873) 60 Tenn. 178. Another Tennessee case, *Wilcox v. State* (1894) 94 Tenn. 106, 28 S.W. 312, expressed

1. *Genz v. State* (1896) 59 N.J.L. 488, 37 Atl. 69; *State v. Carrigan* (1919) 93 N.J.L. 268, 108 Atl. 315; *State v. George* (1932) 108 N.J.L. 508, 158 Atl. 509.

2. *Cochran v. State* (1913) 65 Fla. 91, 61 So. 187; *Hall v. State* (1919) 78 Fla. 420, 441, 83 So. 513.

it thus: "The question is always whether the accused, "at the time he committed the act, knew its nature "and character, and that it was wrong". The emphasis¹ on "the act" was continued in later cases . Nevada required application of the knowledge test "to the "particular act in question". State v. Lewis (1889) 20 Nev. 333, 350, 22 Pac. 241, and to the same effect, State v. Hartley (1895) 22 Nev. 342, 40 Pac. 372. Oregon used similar language in restricting the knowledge test "to the particular act he did". State v. Murray (1884) 11 Ore. 413, 5 Pac. 55. With some variation of expression, other cases took² the same view . In Maine, "the act" was bound to the knowledge test so as to indicate particularity. State v. Knight (1901) 95 Me. 467, 50 Atl. 276.

Seven more states indicated particularity by reference to "the act" in many, although not in the preponderance of their decisions. The decisions

1. Bond v. State (1914) 129 Tenn. 75, 83, 165 S.W. 229; Davis v. State (1930) 161 Tenn. 23, 28 S.W. (2d) 993.

2. State v. Zorn (1892) 22 Ore. 591, 30 Pac. 317. Cf. State v. Lauth (1905) 46 Ore. 342, 80 Pac. 660. State v. Butchek (1927) 121 Ore. 141, 253 Pac. 367, 254 Pac. 805.

not stressing it, did not, of course, deny it, but merely remained silent on the question. These states, and the leading decisions in each, were: -
Illinois¹ -- People v. Lowhone (1920) 292 Ill. 32, 126 N.E. 620; Michigan² -- People v. Bowen (1911) 165 Mich. 231, 130 N.W. 706; South Carolina³ -- State v. Bundy (1885) 24 S.C. 439; Vermont⁴ -- Doherty v. State (1901) 73 Vt. 380, 50 Atl. 1113; Wyoming⁵ -- Flanders v. State (1916) 24 Wyo. 81, 156 Pac. 1121. Two states implied the same idea in their statutes: North Dakota⁶ and Oklahoma⁷.

1. See also, People v. Geary (1921) 297 Ill. 608, 131 N.E. 97 and People v. Cochran (1924) 313 Ill. 508, 145 N.E. 207.

2. See also, People v. Finley (1878) 38 Mich. 482; People v. Durfee (1886) 62 Mich. 487, 29 N.W. 109; People v. Quimby (1903) 134 Mich. 625.

3. See also, State v. Jackson (1910) 87 S.C. 407, 69 S.E. 883 and State v. Bramlett (1920) 114 S.C. 389, 397, 103 S.E. 755.

4. See also, State v. Kelsie (1919) 93 Vt. 450, 108 Atl. 391.

5. See also, Cirej v. State (1916) 24 Wyo. 507, 161 Pac. 556.

6. Comp. Laws (1913) Sec. 9207.

7. Okla. Stat. (1931) Sec. 1797.

In several instances, failure to charge with respect to particularity was regarded as prejudicial error. *Bolling v. State* (1891) 54 Ark. 588, 16 S.W. 658 and *Sherman v. State* (1929) 118 Neb. 84, 223 N.W. 645. In every jurisdiction, excluding New Hampshire, instances could be found of charges in the language, more or less exact, of the *McNaghten* expression of particularity. Other charges in analagous language implying or indicating particularity could also be found in almost every jurisdiction. It is, therefore, submitted that, despite the fact that a clear pattern with respect to particularity could only be found in the states indicated, nonetheless the *McNaghten* requirement of particularity may be regarded as implicit in the law of the various¹ states .

1. Always excluding New Hampshire, of course.

American Variations Of The Knowledge Test:
The Double Category And Sub-Classes

The wording of the knowledge test generally adopted in an English charge to the jury has had its immediate genesis in that part of the McNaghten Rules requiring that the accused must have been labouring under such a prerequisite mental condition¹ "as not to know the nature and quality of the act "he was doing, or if he did know it that he did not "know he was doing wrong". For convenience of reference, and to distinguish it from another word-² ing given in the Rules , this might be labelled the double form of the McNaghten knowledge test. Treating this double form as a category, the American states within such a category might be divided into four sub-classes.

The first and largest sub-class consisted of ten states: -- California, Idaho, Kansas, Maryland

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1. "Defect of reason from disease of the mind".
 2. The other wording of the knowledge test given in the Rules was: "The usual course ... has been to leave the question to the jury whether the accused had a sufficient degree of reason to know he was doing an act that was wrong: and this course we think is correct ...".

Minnesota, Nevada, New York, North Carolina,
Oregon and West Virginia. Even within this sub-
class there were variations of expression. North
Carolina worded it more broadly than the Rules:
"If the prisoner at the time of the homicidal act
"was in a state of mind to comprehend his relation
"to others, the nature and criminal character of
"the act, and ¹ was conscious that he was doing
"wrong, he was responsible; otherwise he was not..."
State v. Potts (1888) 100 N.C. 457, 6 S.E. 657.
Other decisions both earlier ² and later ³ were to
the same effect. The state has insisted upon both
aspects of the McNaghten form, whatever else may
be added. Thus an instruction in terms of knowledge
of wrong that did not also refer to "nature and
"character" was rejected on appeal. State v.
Spivey (1903) 132 N.C. 989, 43 S.E. 475. In Calif-
ornia the preponderance of cases used the McNaghten

1. The conjunctive wording, it has been pointed out
"can perhaps be attributed to carelessness".
Weihsfen, Insanity As A Defense In Crim. Law. p. 38.
In practice the test is used as though the wording
were disjunctive.

2. State v. Haywood (1867) 61 N.C. 376.

3. State v. English (1913) 164 N.C. 497, 80 S.E. 72;
State v. Jones (1926) 191 N.C. 753, 133 S.E. 81.

double form without significant variation¹. Other California cases stated the test as "capacity to distinguish between right and wrong in relation to the act charged, and knowledge and consciousness that what he is doing is wrong and criminal, and will subject him to punishment". People v. Willard² (1907) 150 Cal. 543, 89 Pac. 124 and others³. Still other California cases have given instructions simply in terms of capacity to distinguish right from wrong, without appellate disapproval³. Idaho has largely followed the double form as given in the McNaghten Rules. People v. Walter (1871) 1 Ida. 386 and State v. Wetter 11 Ida. 433, 83 Pac. 341. New York used the McNaghten double form before codifi-

1. Among others see, People v. Coffman (1864) 24 Cal. 230, 235; People v. Ferris (1880) 55 Cal. 588; People v. Ashland (1912) 20 Cal. App. 168, 128 Pac. 798; People v. Morisawa (1919) 180 Cal. 148, 179 Pac. 888; People v. McGann (1924) 194 Cal. 688, 230 Pac. 169; People v. Keaton (1931) 211 Cal. 722, 296 Pac. 609.

2. People v. Bundy (1914) 168 Cal. 777, 145 Pac. 537; People v. Reid (1924) 193 Cal. 491, 225 Pac. 859.

3. People v. Hoin (1882) 62 Cal. 120; People v. Fallon (1906) 149 Cal. 287, 86 Pac. 689; People v. Keyes (1918) 178 Cal. 794, 175 Pac. 6.

12

-cation of its criminal law , and now by statute

3

makes the test "defect of reason as (1) not to
"know the nature and quality of the act he was doing,
"or (2) not to know that the act was wrong". Kansas
adopted the McNaghten double form as a matter of
common law . Oregon was characterized by rather
free variation. The first case required "capacity
"and reason sufficient to enable him to distinguish
"between right and wrong as to the particular act ...
"knowledge and consciousness that it was wrong and
"criminal and would subject him to punishment".
State v. Murray (1884) 11 Ore. 413, 5 Pac. 55. By
the early twentieth century the form had come much
closer to the Rules: "incapable of discerning right
"from wrong, or of understanding or appreciating
"the extent, nature, consequences or effect of his

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1. People v. Kleim (1845) Edm. Sel. Cas. 13;
People v. Devine (1848) Edm. Sel. Cas. 594; O'Brien
v. People (1867) 36 N.Y. 276: among others.
 2. Cahill's Consol. Laws (1923) Chap. 41, Sec. 1120.
 3. State v. Nixon (1884) 32 Kans. 205, 4 Pac. 159;
State v. O'Neil (1893) 51 Kans. 651, 33 Pac. 287;
State v. Murray (1910) 83 Kans. 148, 110 Pac. 103;
State v. White (1922) 112 Kans. 83, 209 Pac. 660.

"wrongful act". State v. Lauth (1905) 46 Ore. 342, 80 Pac. 660. But a fairly recent case spoke of "power to discriminate between right and wrong". State v. Butchek (1927) 121 Ore. 141, 253 Pac. 367, 254 Pac. 805. Maryland utilized the McNaghten formulation with very little change, thus: "capacity and reason sufficient to enable him to distinguish¹ between right and wrong, and understand the nature and consequences of his acts ...". Spencer v. State (1888) 69 Md. 28, 13 Atl. 809; Deems v. State (1915) 127 Md. 624, 96 Atl. 878. Minnesota used a slightly shortened version by statute²: "not to know the nature of his act, or that it was wrong". Nevada in 1889 adopted a form almost identical in wording with the language of the earliest Oregon

1. Again a conjunctive expression reflected disjunctive practice.

2. Gen. Stat. (1927) Sec. 9915.

¹
case . West Virginia formulated its test in language rather broader than the McNaghten double form, and in some respects similar to the North Carolina form: State v. Harrison (1892) 36 W. Va. 729, 743, 15 S.E. 982 instructed in terms of, "capacity to know right "from wrong, and comprehend his relation to others, "and to understand the nature and consequences of "the particular act, and that the act was morally "wrong, or what is the same, whether he was conscious² "of doing wrong" .

The second sub-class within the general category of cases expressing themselves in the double form of the McNaghten knowledge test consisted

1. In Nevada, State v. Lewis (1889) 20 Nev. 333, 350, 22 Pac. 241 gave the test as "capacity and reason sufficient to enable him to distinguish right from wrong as to the particular act ... knowledge and consciousness that the act he is doing is wrong and will deserve punishment". See also, State v. Hartley (1895) 22 Nev. 342, 40 Pac. 372. And cf. the early Oregon case of State v. Murray (1884) 11 Ore. 413, 5 Pac. 55. The only noteworthy difference was that the Oregon decision spoke of "wrong and criminal" while Nevada reduced it to "wrong".

2. Cf. State v. Potts (1888) 100 N.C. 457, 6 S.E. 657, the North Carolina case.

of states transitional between the ten states immediately above and the irresistible impulse states. In Maine, the case of *State v. Knight* (1901) 95 Me. 467, 50 Atl. 276, used the McNaghten double form, and denied irresistible impulse. However, an earlier case, *State v. Lawrence* (1870) 57 Me. 574, had reserved the question of irresistible impulse for future decision, while otherwise employing much the same language with respect to the knowledge test. In Wisconsin, the case of *Osborn v. State* (1910) 143 Wis. 249, 126 N.W. 737, rejected irresistible impulse although earlier cases had seemed to approve the doctrine. The *Osborn* decision required that the prerequisite mental condition had rendered the accused "incapable of distinguishing between right and wrong" and so unconscious at the time of the nature of the "act he is committing, and that commission of it will "subject him to punishment". Later cases, however, spoke only of incapacity to distinguish between¹ right and wrong .

1. *Oehler v. State* (1930) 202 Wis. 530, 232 N.W. 866;
Jessner v. State (1930) 202 Wis. 184, 231 N.W. 634.

The third sub-class within the general category using the double form of the McNaghten knowledge test consisted of irresistible impulse states. Six states were involved: Arkansas, Connecticut, Utah, Vermont, Virginia and Wyoming. In State v. Johnson (1873) 40 Conn. 136, Connecticut¹ approved instructions that required, "reason and "understanding enough to enable him to judge of the "nature, character and consequences of the act charged "against him, that the act is wrong and criminal, and "that the commission of it will properly and justly "expose him to penalties". Virginia adopted the double form but varied the language somewhat. DeJarnette v. Comm. (1881) 75 Va. 867, and Thurman v. Comm. (1908) 107 Va. 912, 60 S.E. 99. Arkansas used a formulation very much in the words of the Rules, but with irresistible impulse added. Bell v. State² (1915) 120 Ark. 530, 185 S.W. 186, and others .

1. Accord: State v. Saxon (1913) 87 Conn. 5, 86 Atl. 590.

2. Diggs v. State (1916) 126 Ark. 455, 190 S.W. 448; Hankins v. State (1917) 133 Ark. 38, 201 S.W. 832; Travis v. State (1923) 160 Ark. 215, 254 S.W. 464.

Vermont's test was similar. *Doherty v. State* (1901) 73 Vt. 380, 50 Atl. 1113, and *State v. Kelsie* (1919) 93 Vt. 450, 180 Atl. 391. Wyoming used a shorter expression to the same effect. *Flanders v. State* (1916) 24 Wyo. 81, 156 Pac. 1121, and *Cirej v. State* (1916) 24 Wyo. 507, 161 Pac. 556. In Utah the earlier cases referred only to capacity to distinguish right from wrong¹, but later used the double form of the knowledge test, and expressed it very much in the words of the Rules. *State v. Green* (1931) 78 Utah 580, 6 Pac. (2d) 177.

The fourth sub-class was also transitional in character, and comprised a rather complex group of five states: Missouri, Nebraska, Mississippi, Texas and Wisconsin². In Missouri, *State v. Klinger* (1868) 43 Mo. 127, had used the McNaghten language in expressing the double form of the knowledge test. But *State v. Redemeier* (1879) 71 Mo. 173, pointed

1. *People v. Calton* (1888) 5 Utah 451, 16 Pac. 902; *State v. Mewhinney* (1913) 43 Utah 135, 134 Pac. 632.

2. Wisconsin also appeared in the second sub-class as transitional with respect to irresistible impulse.

out that while "nature and quality" might be added in instructions, it did not constitute error not to do so and to limit the charge to knowledge of right and wrong ¹. Subsequent cases tended to use the shorter form almost exclusively ². Nebraska utilized both the double form ³ of the knowledge test and the shorter, single form ⁴ (instructing merely in terms of capacity to distinguish right from wrong) rather indiscriminately. It was, however, held in error ⁵ to stress a conjunctive instruction in terms of

1. Denoted the single form of the knowledge test, hereinafter.

2. State v. Erb (1881) 74 Mo. 199; State v. Kotovsky (1881) 74 Mo. 247; State v. Turlington (1890) 102 Mo. 642, 15 S.W. 141; State v. Barker (1908) 216 Mo. 532, 115 S.W. 1102; State v. Rose (1917) 271 Mo. 17, 195 S.W. 1013.

3. Muzik v. State (1916) 99 Neb. 496, 156 N.W. 1056; Philbrick v. State (1920) 105 Neb. 120, 179 N.W. 398; Krans v. State (1922) 108 Neb. 331, 187 N.W. 895; Carter v. State (1927) 115 Neb. 320, 212 N.W. 614.

4. Wright v. People (1876) 4 Neb. 407; Hawe v. State (1881) 11 Neb. 537, 10 N.W. 452; Shannon v. State (1923) 111 Neb. 457, 196 N.W. 635; Torske v. State (1932) 123 Neb. 161, 242 N.W. 408.

5. This would seem to be the proper view, and conjunctive usage in the United States, even where not treated as error on appeal, has been regarded as disjunctive in practice.

"incapable of understanding the nature of such act
"and incapable of distinguishing between right and
"wrong". Knights v. State (1899) 58 Neb. 225, 78
N.W. 508. Mississippi seemed to equate both wings
of the double form, giving as a test, "ability
"to realize and appreciate the nature and quality
"thereof --- his ability to distinguish right
"and wrong". Smith v. State (1909) 95 Miss. 786,
49 So. 945. Earlier cases tended to instruct only
with respect to "right and wrong"¹. Texas also
apparently considered "nature and quality" synony-
mous with "right and wrong". In Montgomery v. State
(1912) 68 Tex. Crim. 78, 151 S.W. 813, a charge
limited to capacity to know the nature and quality
of the act was considered correct, while in Lester
v. State (1913) 69 Tex. Crim. 426, 154 S.W. 554,
an instruction limited to knowledge of right and
wrong was also considered correct. As might be

1. Cunningham v. State (1879) 56 Miss. 269;
Grissom v. State (1884) 62 Miss. 167; Kearney v.
State (1890) 68 Miss. 233, 8 So. 292.

expected, both the double form¹ and the single²
form of the knowledge test had numerous instances³
of use. Wisconsin, previously discussed, might
also be mentioned as a state that may have meant
to indicate synonymous meaning between the two wings
of the double form. At any rate, *Osborn v. State*
(1910) 143 Wis. 249, 126 N.W. 737, spoke of "incap-
"able of distinguishing between right and wrong
"and so unconscious ... of the nature of the act..."

American Variations Of The Knowledge Test:
The Single Category And Sub-Classes

The most frequently used wording of the
knowledge test in the United States was not the
double form previously discussed. The McNaghten
Rules had contained a simpler statement that American

1. *Clark v. State* (1880) 8 Tex. Crim App. 350;
Smith v. State (1909) 55 Tex. Crim. 563, 117 S.W. 966;
Tubb v. State (1909) 55 Tex. Crim. 606, 117 S.W. 858,
among others.

2. *Harrison v. State* (1902) 44 Tex. Crim. 164, 69
S.W. 500; *Kelley v. State* (1907) 51 Tex. Crim. 151,
101 S.W. 230; *Parker v. State* (1922) 91 Tex. Crim.
68, 238 S.W. 943, among others.

3. Under sub-class two.

jurists obviously preferred. For convenience of reference, that statement might be called the single form of the knowledge test. As stated in the Rules, that form was: "whether the accused had a sufficient "degree of reason to know he was doing an act that "was wrong". Treating the states that exclusively or pre-eminently adopted this single form as a category, a number of sub-divisions were noticeable.

At least two states considered under the double form should be mentioned again because of the large number of cases in those jurisdictions that instructed in terms of the single form alone. The states were California and Texas, with the cases previously noted.

Seventeen states and the District of Columbia relied wholly or largely on the single form of the knowledge test expressed either in pure McNaghten language or some variant of which the most popular seemed to be "capacity to distinguish right and wrong". The seventeen states were: Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, New Mexico, Ohio, Pennsylvania, South Dakota, Tennessee and Washington. Of the eighteen

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jurisdictions, eleven¹ fall within the irresistible impulse group of states. This may have had some significance in their adopting the single form of the knowledge test with its greater simplicity of expression. The single form of the knowledge test coupled with instructions as to irresistible impulse may have been regarded as a quite sufficient burden for a jury.

Alabama, in the much quoted decision of Judge Somerville, *Parsons v. State* (1886) 81 Ala. 577, 2 So. 854, laid down the requirement "did he know right from wrong as applied to the particular act" and then added alternative instructions with respect to irresistible impulse. The decision was followed with a high degree of uniformity of expression in later cases.² Colorado required that the accused "be incapable of distinguishing right and wrong" or if he could that he suffered from

1. Alabama, Colorado, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, Michigan, New Mexico, Ohio.

2. *Parrish v. State* (1903) 139 Ala. 16, 36 So. 1012; *Granberry v. State* (1913) 182 Ala. 4, 62 So. 52; *Mizell v. State* (1913) 184 Ala. 16, 63 So. 1000; *Manning v. State* (1928) 217 Ala. 357, 116 So. 360, among others.

irresistible impulse. Ryan v. People (1915) 60 Colo. 425, 153 Pac. 756, and Shank v. People (1926) 79 Colo. 576, 247 Pac. 559. Delaware expressed its test similarly. State v. Windsor (1851) 5 Harr. 512,¹ and others. The District of Columbia instructed that the "accused must be capable not only of distinguishing between right and wrong, but that he "was not impelled to do the act by an irresistible "impulse". Smith v. U.S. (1929) 59 App. D.C. 144, 36 Fed. (2d) 548. Illinois expressed it as "mere "ability to distinguish right from wrong is not a "correct test ... but the accused must be capable "of knowing right from wrong as to the particular "act, and he must also be able to exercise the power "to choose between them". People v. Lowhone (1920)² 292 Ill. 32, 126 N.E. 620, and others.

1. State v. Reidell (1888) 9 Hous. 470, 14 Atl. 550; State v. Cole (1899) 18 Del. 344, 45 Atl. 391; State v. Jack (1903) 20 Del. 470, 58 Atl. 833.

2. People v. Geary (1921) 297 Ill. 608, 131 N.E. 97; People v. Krauser (1925) 315 Ill. 485, 146 N.E. 593; People v. Saylor (1925) 319 Ill. 205, 149 N.E. 767.

A more recent case, however, directed as to knowledge of right and wrong without mentioning irresistible impulse. *People v. Marquis* (1931) 344 Ill. 261, 176 N.E. 314. Indiana used both the double form and the single form. *Bradley v. State* (1869) 31 Ind. 492, and *Goodwin v. State* (1884) 96 Ind. 550. In contradistinction to the *Marquis* case in Illinois, the *Morgan* case in Indiana regarded it as error to instruct concerning knowledge of right and wrong, without coupling it with irresistible impulse, even though irresistible impulse alone had been mentioned in the charge. *Morgan v. State* (1920) 190 Ind. 411, 130 N.E. 528. Michigan worded its test as "not "capable of knowing he was doing wrong in the "particular act, or if he had not the power to resist "the impulse to do the act by reason of disease or "insanity". *People v. Bowen* (1911) 165 Mich. 231, 130 N.W. 706, and others still earlier¹. Kentucky

1. *People v. Finley* (1878) 38 Mich. 482; *People v. Durfee* (1886) 62 Mich. 487, 29 N.W. 109; *People v. Quimby* (1903) 134 Mich. 625, 96 N.W. 1061.

took much the same view , and also specifically pointed out that if either element were lacking there could be no criminal responsibility. Hall v. Comm. (1913) 155 Ky. 541, 159 S.W. 1155. Ohio had adopted similar requirements as early as 1843. Clark v. State (1843) 12 Ohio R. 483. Subsequent cases were in accord ². Louisiana in State v. Tapie (1931) 173 La. 780. 138 So. 665, used as many different ways of saying the same thing as the McNaghten Rules, with even more confusion resulting. It was clear, however, that "mental capacity to distinguish between right and wrong" was a test, and apparently irresistible impulse was also ³. New Mexico also posed its test in rather confusing terminology, but again apparently both the single

1. Graham v. Comm. (1855) 55 Ky. 587; Kreil v. Comm. (1869) 68 Ky. 362; Montgomery v. Comm. (1889) 88 Ky. 509, 11 S.W. 475; Abbott v. Comm. (1900) 107 Ky. 624, 55 S.W. 196; Arnold v. Comm. (1922) 194 Ky. 421, 240 S.W. 87; Miller v. Comm. (1930) 236 Ky. 448, 33 S.W. (2d) 590.

2. Blackburn v. State (1872) 23 Ohio St. 146; State v. Miller (1895) 7 Ohio N.P. 458.

3. The decision spoke of "such disordered or distorted condition of the mind as to render the individual incapable of reasoning or of exercising the will".

form of the knowledge test¹ and irresistible impulse² were meant to be recognized.

In addition to these eleven irresistible impulse jurisdictions, there were seven other states that utilized the single form of the knowledge test pre-eminently. These were Arizona, Florida, Georgia, Pennsylvania, South Dakota, Tennessee and Washington. The case of *Lanterio v. State* (1921) 23 Ariz. 15, 201 Pac. 91, stated the Arizona test as "ability to distinguish between right and wrong as applied to the act involved". Georgia ruled to the same³ effect, as did Tennessee⁴. But some of the early Tennessee cases used the double form of the knowledge

1. *Faulkner v. Terr.* (1892) 6 N. Mex. 464, 30 Pac. 905, utilized the single form of the knowledge test, without anything more.

2. *Terr. v. Kennedy* (1910) 15 N. Mex. 556, 110 Pac. 854, apparently approved irresistible impulse.

3. *Carr. v. State* (1895) 96 Ga. 284, 22 S.E. 570;
Holton v. State (1911) 137 Ga. 86, 72 S.E. 898;
Bowden v. State (1921) 151 Ga. 336, 106 S.E. 575;
Mars v. State (1926) 163 Ga. 43, 135 S.E. 410;
Caison v. State (1930) 171 Ga. 1, 154 S.E. 337.

4. *Johnson v. State* (1898) 100 Tenn. 254, 45 S.W. 436;
Watson v. State (1915) 133 Tenn. 198, 180 S.W. 168;
Davis v. State (1930) 161 Tenn. 23, 28 S.W. (2d) 993.

test as well. *Wilcox v. State* (1894) 94 Tenn. 106, 28 S.W. 312. Washington instructed with regard to "Capacity ... to distinguish between right and wrong "with reference to the act complained of". *State v. Craig* (1909) 52 Wash. 66, 100 Pac. 167, and others ¹. Florida inquired whether there was "a sufficient "degree of reason to know he was doing an act that "was wrong", as the result of statutory adoption of English common law. *Davis v. State* (1902) 44 Fla. 32, 32 So. 822, and others ². The South Dakota code ³ required proof that accused was "incapable of knowing its wrongfulness". See also *State v. Leehman* (1891) 2 S.D. 171, 49 N.W. 3. Pennsylvania expressed the test in a great variety of ways, so great, in fact, that certainty of meaning became somewhat obscured. Nonetheless, "the wise rule which makes

1. *State v. Saffron* (1927) 143 Wash. 34, 254 Pac. 463; *State v. Schafer* (1930) 156 Wash. 240, 286 Pac. 833.

2. *Cochran v. State* (1913) 65 Fla. 91, 61 So. 187; *Hall v. State* (1919) 78 Fla. 420, 83 So. 513.

3. *Comp. Laws* (1929) vol. i, sec. 3583.

"the test of the accused's responsibility, his
"ability to distinguish between right and wrong" was
accepted. Comm. v. Cavalier (1925) 284 Pa. 311, 320,
131 Atl. 229.

Three states, Oklahoma, North Dakota and
South Carolina, expressed their tests in the single
form, but attached a rather different meaning to
this form in their case interpretations. Oklahoma
adopted the single form by statute, but expressed
it in language slightly varied from the McNaghten
Rules. The statute¹ required that "at the time of
"committing the act charged against them they were
"incapable of knowing its wrongfulness". But in
Maas v. Terr. (1901) 10 Okla., 714, 63 Pac. 960, it
was held that capacity to comprehend "nature and
"consequences" was included in the concept of
wrongfulness. Other cases interpreted wrongfulness
in a double form manner by speaking of ability to
understand the nature and consequences of the act

1. Okla. Stat. (1931) Sec. 1797.

as well as to distinguish wrong from right¹. North
Dakota also had a statute² requiring that "at the
"time of committing the act ... they were incapable
"of knowing its wrongfulness". But as was the
case in Oklahoma, the decisions gave a broader
content to the statutory language. Thus State v.
Thronson (1922) 49 N.D. 348, 191 N.W. 628, instruct-
ed with regard to "capacity to understand the nature
"of the act ... and the ability to distinguish
"between right and wrong with respect to such act".
South Carolina followed a somewhat similar pattern.
It was stated that the test was "mental capacity to
"distinguish moral or legal right from moral or
"legal wrong". State v. Jackson (1910) 87 S.C. 407,
69 S.E. 883, and State v. Bramlett (1920) 114 S.C.
389, 103 S.E. 755. But in State v. Bundy (1885)
24 S.C. 439, the nature of the act was apparently

1. Queenan v. Terr. (1901) 11 Okla. 261, 71 Pac.
218; Smith v. State (1916) 12 Okla. Crim. 307, 155
Pac. 699; McNeill v. State (1920) 18 Okla. Crim. 1,
192 Pac. 256; Reed v. State (1923) 23 Okla. Crim.
56, 212 Pac. 441.

2. Comp. Laws (1913) Sec. 9207.

understood in terms of the double form, thus:
"notwithstanding his mind may be diseased, if he is
"still capable of forming a correct judgment as to
"the nature of the act, as to its being morally
"or legally wrong, he is still responsible ...".
The Bundy ruling was followed in other cases ¹,
including one case subsequent to State v. Jackson,
supra. State v. Hyde (1911) 90 S.C. 296, 73 S.E.
180. Oklahoma and South Carolina apparently
included "nature" of the act within the meaning of
wrong. In a different manner, New Jersey implied
somewhat the same idea. Chief Justice Hornblower
instructed that the accused had to be "conscious
"that it was an act which he ought not to do".
State v. Spencer (1846) 21 N.J.L. 196. Other cases
spoke of the test as capacity to understand or
appreciate "the nature and quality of the act and
"that it is wrong". Graves v. State (1883) 45 N.J.L.
347, and State v. Close (1929) 106 N.J.L. 321,
148 Atl. 764.

1. State v. McIntosh (1893) 39 S.C. 97, 17 S.E.
446; State v. Lloyd (1909) 85 S.C. 73, 67 S.E. 9.

From the Oklahoma, North Dakota and South Carolina view that included the nature of the act within the concept of wrong to the New Jersey view that spoke of wrong in terms of consciousness "that it was an act which he ought not to do," there was no great gulf. Equally, the difference was not great between the New Jersey attitude and that expressed by the United States Supreme Court in its few decisions. The latter Court approved a charge requiring the accused to be "unconscious at "the time of the nature of the act". The same charge had also spoken of "conscious of the nature "of the act and able to distinguish between right "and wrong" in a manner implying substantially equivalent meaning, although the test was far from clear in manner of expression. *Davis v. U.S.* (1895) 160 U.S. 469, 16 Sup. Ct. 353. From this point of view it was but a short step to the final variation in the single form of the knowledge test. Iowa laid down the requirement of capacity to comprehend the nature and consequences of the act. *State v. Buck* (1928) 205 Ia. 1028, 219 N.W. 17. Nothing was said of knowledge of right and wrong, and comprehension of the nature and consequences was treated as though it meant capacity to understand right and wrong.

Rhode Island, Montana and Massachusetts did not lend themselves to ready classification. In Rhode Island the single form of the knowledge test was used in one case, but the appellate court declined to rule on it as an extraneous issue. *State v. Quigley* (1904) 26 R.I. 263, 58 Atl. 905. Montana did not fully resolve what Holloway J. called its "conflicting opinions". *State v. Keerl* (1904) 29 Mont. 508, 75 Pac. 362. The single form of the knowledge test was used, coupled with irresistible impulse instructions, and at the same time the New Hampshire cases¹ were apparently approved. *State v. Peel* (1899) 23 Mont. 358, 59 Pac. 169; *State v. Keerl*, supra, and others.² In Massachusetts, Chief Justice Shaw's charge in *Comm. v. Rogers* (1844) 7 Metc. 500, became the basis for future decisions in that state, and the source of future arguments in

1. The New Hampshire rule will be discussed later; briefly, it dispersed with the knowledge test, and left the matter of criminal intent to the jury to be considered in light of factual evidence of mental disease. *State v. Pike* (1869) 49 N.H. 399; *State v. Jones* (1871) 50 N.H. 369.

2. *State v. McGowan* (1907) 36 Mont. 422, 93 Pac. 552; *State v. Crowe* (1909) 39 Mont. 174, 102 Pac. 579; *State v. Colbert* (1920) 58 Mont. 584, 194 Pac. 145.

other states as to what the Rogers case meant. Not only was the test not clearly expressed, but even irresistible impulse was rather hazily set out. Some states interpreted the Rogers case as authority for the doctrine ¹, others as authority against it ². It would seem, however, with respect to the single form of the knowledge test, that the weight of authority viewed the Rogers case as supporting the right and wrong test ³.

American Interpretations of Wrong

The most comprehensive American consideration of the meaning of wrong as used in the tests of non-responsibility was that of Mr. Justice Cardozo when he sat as Chief Justice of New York's highest

1. Alabama, Colorado and Delaware.

2. Maryland, Mississippi, Tennessee, West Virginia and Wisconsin.

3. See Brannon, J. in State v. Harrison (1892) 36 W. Va. 729, 749, 15 S.E. 982, stating: "It struck me that the opinion of Chief Justice Shaw supported the 'right and wrong' test; and I find that Mr. Justice Clifford concurs in this view". See also U.S. v. Holmes (1858) Fed. Cas. No. 15,382, 1 Cliff. 98, 119; Spencer v. State (1888) 69 Md. 28, 13 Atl. 809; Bovard v. State (1858) 30 Miss. 600; Stuart v. State (1873) 60 Tenn. 178; Osborn v. State (1910) 143 Wis. 249, 126 N.W. 737.

tribunal and before his elevation to the United States Supreme Court. In *People v. Schmidt* (1915) 216 N.Y. 324, 110 N.E. 945, it was held that under the McNaghten Rules and under the New York statute¹ embodying the double form of the knowledge test, "wrong" meant morally so, and was not to be restricted to "illegal". In West Virginia, the case of *State v. Harrison* (1892) 36 W. Va. 729, 743, 15 S.E. 982, clearly delineated the meaning as "morally wrong". In Mississippi the definition was less explicit, but moral wrong was strongly implied. *Kearney v. State* (1890) 68 Miss. 233, 8 So. 292, and *Smith v. State* (1909) 95 Miss. 786, 49 So. 945. The New Jersey statement was explicitly "a moral point of view". *State v. Spencer* (1846) 21 N.J.L. 196, and *State v. Carrigan* (1919) 93 N.J.L. 268, 108 Atl. 315.² The Oklahoma statute was interpreted to give "wrongfulness" a moral connotation. *Maas v. Terr* (1901) 10 Okla. 714, 63 Pac. 960.

1. Cahill's Consol. Laws (1923) Chap. 41, Sec. 1120.

2. Okla. Stat. (1931) Sec. 1797.

South Carolina stated the test emphatically¹ in terms of moral or legal wrong . State v. Jackson (1910) 87 S.C. 407, 69 S.E. 883, and State v. Bramlett (1920) 114 S.C. 389, 103 S.E. 755. Ohio took the same position in more figurative language, asking, "did he know at the time that it "was an offence against the laws of God and man?". Clark v. State (1843) 12 Ohio R. 483, 495, and others² . Utah held a similar view. State v. Green (1931) 78 Utah 580, 6 Pac. (2d) 177. Wyoming also was in accord. Flanders V. State (1916) 24 Wyo. 81, 156 Pac. 1121, and Cirej v. State (1916) 24 Wyo. 507, 161 Pac. 556. In Idaho, the case of State v. Wetter (1905) 11 Ida. 433, 83 Pac. 341, put the matter as simply as this: "By wrong the law means moral wrong". However, five years later, State v. Fleming (1910) 17 Ida. 471, 489, 106 Pac. 305, added the instruction, "Did he know that it was prohibited

1. "Mental capacity or the want of it sufficiently to distinguish moral or legal right from moral or legal wrong, and to recognize the particular act charged as morally or legally wrong".

2. Blackburn v. State (1872) 23 Ohio St. 146; State v. Miller (1895) 7 Ohio N.P. 458.

"by the laws of the state and ... would entail
"punishment and penalty upon himself?".

While the foregoing ten states made their attitude clear enough not to require comment, there were others whose position was more difficult to judge. Nevada spoke of "consciousness that the act
"he is doing is wrong and will deserve punishment".
State v. Lewis (1889) 20 Nev. 333, 350, 22 Pac. 241,
and State v. Hartley (1895) 22 Nev. 342, 40 Pac. 372.
In Wisconsin the case of Oborn v. State (1910)
143 Wis. 249, 126 N.W. 737, also instructed in terms
of punishment saying: "incapable of distinguishing
"between right and wrong and so unconscious at the
"time of the nature of the act which he is committing,
"and that commission of it will subject him to
"punishment". There was, however, indication from
other cases that Oborn did not establish a purely
legal standard. Thus Oehler v. State (1930) 202
Wis. 530, 232 N.W. 866, indirectly emphasized the
moral aspect by charging, "such a perverted condition
"of the mental and moral faculties as to render the
"person incapable of distinguishing between right
"and wrong". On the other hand, Tennessee in
Stuart v. State (1873) 60 Tenn. 178 and

¹
others took much the same view as the Oborn case in Wisconsin (i.e., wrong in the sense of leading to punishment) and later cases seemed only to confirm an interpretation of legal wrong. *Watson v. State* (1915) 133 Tenn. 198, 180 S.W. 168, and *McElroy v. State* (1922) 146 Tenn. 442, 242 S.W. 883.

Two other states, Oregon and Connecticut, spoke of the act as wrong and criminal as well as leading to punishment. Oregon phrased it, "knowledge and consciousness that it was wrong and criminal and would subject him to punishment". *State v. Murray* (1884) 11 Ore. 413, 5 Pac. 55, and *State v. Torn* (1892) 22 Ore. 591, 30 Pac. 317. Connecticut, with appellate approval, instructed with reference to the act as "wrong and criminal, and that the commission of it will properly and justly expose him to penalties". *State v. Johnson* (1873) 40 Conn. 136, and *State v. Saxon* (1913) 87 Conn. 5,

1. *Johnson v. State* (1898) 100 Tenn. 254, 260, 34 S.W. 436; *Bond v. State* (1914) 129 Tenn. 75, 83, 165 S.W. 229; *Davis v. State* (1930) 161 Tenn. 23, 28 S.W. (2d) 993.

86 Atl.590. While the stress on ultimate punishment seemed to imply a legal standard of wrong, the probabilities were in favor of a joint moral or legal interpretation. Otherwise the linking of "wrong" with "criminal" would have been merely redundant. While this possibility remains, a meaningful interpretation must be preferred over one without meaning. Hence, it is submitted that Oregon and Connecticut should both be regarded as approving a moral standard in addition to the legal one, despite the element of doubt.

Two states, Virginia¹ and California² simply spoke of the act as "wrong and criminal" without referring to ultimate punishment or penalty. These states, it is submitted, may also be classed as approving a moral standard in addition to the

1. *Dejarnette v. Comm.* (1881) 75 Va. 867; *Thurman v. Comm.* (1908) 107 Va. 912, 60 S.E. 99.

2. *People v. Willard* (1907) 150 Cal. 543, 89 Pac. 124; *People v. Bundy* (1914) 168 Cal 777, 145 Pac. 537; *People v. Reid* (1924) 193 Cal. 491, 225 Pac. 859; *People v. Sloper* (1926) 198 Cal. 238, 244 Pac. 362; *People v. Zari* (1921) 54 Cal. App. 133, 201 Pac. 345.

legal one. The same reasons hold as were applied in the cases of Oregon and Connecticut, with this difference: - there was less doubt in the Virginia and California situations, since there was no reference to punishment.

North Carolina used a test that inquired, "If the prisoner at the time of the homicidal act "was in a state of mind to comprehend his relation "to others, the nature and criminal character of "the act, and was conscious that he was doing "wrong". State v. Potts (1888) 100 N.C. 457, 6 S.E. 657, and others¹. It may be tentatively suggested that "nature and criminal character" implied moral wrong as well as illegal, but the proposition must at best be regarded as highly doubtful.

American Interpretations of Delusion

Seven states clearly approved the mistake-

1. State v. English (1913) 164 N.C. 497, 80 S.E. 72; State v. Haywood (1867) 61 N.C. 376; State v. Jones (1926) 191 N.C. 753, 133 S.E. 81.

of-fact delusion test of the McNaghten Rules:

Florida, Iowa, Massachusetts, Nevada, Tennessee,
Texas and Utah. The Davis ¹ case in Florida ruled
that the English common law was in force in that
state, and hence the McNaghten Rules were as well.
Earlier still, however, Copeland v. State (1901)
41 Fla. 320, 26 So. 319, had approved the McNaghten
mistake-of-fact interpretation of delusion. More
recently, and subsequent to Davis, Blocker v. State
(1926) 92 Fla. 878, 110 So. 547, arrived at the
same conclusion. In Iowa only one rather early
case directly discussed the question, and although
apparently troubled by the attacks on the mistake-
of-fact view, the Court approved it. State v.
Mewherter (1877) 46 Ia. 88, 100 ². In the leading
Massachusetts case, Chief Justice Shaw held delusion
could result in lack of criminal responsibility
either as the result of the mistake-of-fact delusion

1. Davis v. State (1902) 44 Fla. 32, 32 So. 822.
See also, Hall v. State (1919) 78 Fla. 420, 83 So. 513.

2. But cf. State v. Buck (1928) 205 Ia. 1028, 219
N.W. 17.

formulation or as the result of irresistible impulse with delusion as the symptom of the prerequisite mental disease. *Comm. v. Rogers* (1844) 7 Metc. 500. Nevada approved the *McNaghten* delusion doctrine in *State v. Lewis* (1889) 20 Nev. 333, 22 Pac. 241. Tennessee took a similar view in *Davis v. State* (1930) 161 Tenn. 23, 28 S.W. (2d) 993. A year later Utah adopted the same interpretation in *State v. Green* (1931) 78 Utah 580, 6 Pac. (2d) 177. In Texas an early case, *Merritt v. State* (1898) 39 Tex. Crim. 70, 45 S.W. 21, had observed "that a delusion "need not be confined to the delusive belief "of a fact which, if true, would afford a justification". The Court then added that the knowledge test might also be applied to delusions. In this it went no further than the Rules themselves, and a subsequent case was in accord. *Tubb v. State* (1909) 55 Tex. Crim. 606, 117 S.W. 858. More recently, however, Texas seemed to revert to a narrower interpretation limited to the *McNaghten* mistake-of-fact concept. *Alexander v. State* (1928) 8 S.W. (2d) 176.

Two states, Arkansas and Indiana, approved the McNaghten mistake-of-fact doctrine, but were inconsistent in so doing. In Arkansas the older¹ cases reiterated the doctrine very much in McNaghten language. Later cases limited the application of the doctrine to the pre-persecutory stage of paranoia. Bell v. State (1915) 120 Ark. 530, 180 S.W. 186, and Hankins v. State (1917) 133 Ark. 38, 201 S.W. 832. At the persecutory stage and beyond, the irresistible impulse test was to be applied. Woodall v. State (1921) 149 Ark. 33, 231 S.W. 186. In Indiana the doctrine was also coupled with irresistible impulse; the line of demarcation between application of mistake-of-fact delusion and irresistible impulse was reached when there was evidence of mental abnormality aside from the delusions. McHargue v. State (1923) 193 Ind. 204, 139 N.E. 316.

Two states, California and New York, must be classed as doubtful. In the California case of

1. Bolling v. State (1891) 54 Ark. 588, 16 S.W. 658; Smith v. State (1891) 55 Ark. 259, 18 S.W. 237.

People v. Hubert (1897) 119 Cal. 216, 51 Pac. 329, the McNaghten mistake-of-fact was adopted, although apparently limited to instances where delusion was the only evidence of insanity. But in People v. Willard (1907) 150 Cal. 543, 89 Pac. 124, it was observed that the knowledge test was applicable to delusions. In New York, on the other hand, it was repeatedly noted that the knowledge test (double form) was "the only test of responsibility known to the law of the State of New York". People v. Carlin (1909) 194 N.Y. 448, 455, 87 N.E. 805, and¹ others. But in still other cases, the mistake-of-fact test was approved on appeal, even after the² statute. People v. Taylor (1893) 138 N.Y. 398, 34 N.E. 275, and People v. Ferraro (1900) 161 N.Y.

1. People v. Silverman (1905) 181 N.Y. 235, 73 N.E. 980. The ruling statute, Cahill's Consol. Laws (1923) Chap. 41, Sec. 1120, set out only the knowledge test, and some pre-statutory cases were to the same effect. People v. Kleim (1845) Edm. Sel. Cas. 13; Freeman v. People (1847) 4 Denio 9; People v. Pine (1848) 2 Barb. 566.

2. See preceeding note.

365, 55 N.E. 931. The leading case, today, *People v. Schmidt* (1915) 216 N.Y. 324, 110 N.E. 945, ignored the mistake-of-fact test while expressly approving application of the statute to delusion. Whether this implied rejection of the mistake-of-fact doctrine in delusion, remains open to question.

Five jurisdictions, Alabama¹, District of Columbia², Mississippi³, Montana⁴, and New Hampshire⁵ explicitly denied the mistake-of-fact delusion test.

Two states, Colorado and Nebraska, rejected the doctrine, but not without inconsistency. In Colorado, the case of *Ryan v. People* (1915) 60 Colo. 425, 153 Pac. 765 held the mistake-of-fact test erroneous, but it did not distinguish nor expressly overrule a case earlier in the same year that had

1. *Parsons v. State* (1886) 81 Ala. 577, 2 So. 854.

2. *Guiteau's Case* (1882) 10 Fed. 161, 182.

3. *Kearney v. State* (1890) 68 Miss. 233, 8 So. 292.

4. *State v. Keerl* (1904) 29 Mont. 508, 75 Pac. 362.

5. *State v. Jones* (1871) 50 N.H. 369.

approved the test. *Bulger v. People* (1915) 60 Colo. 165, 151 Pac. 937. In Nebraska, the case of *Kraus v. State* (1922) 108 Neb. 331, 187 N.W. 895, made the knowledge test apply even in cases of delusion and thus rejected the mistake-of-fact delusion test. That case, however, ignored the case of *Prince v. State* (1912) 92 Neb. 490, 138 N.W. 726, and others¹ earlier that had approved the doctrine.

One state, Georgia, adopted a hybrid form of its own. The general test was the single form of knowledge test with irresistible impulse denied². Yet where the defence rested upon evidence of insane delusion, the irresistible impulse test was to be applied. *Anderson v. State* (1871) 42 Ga. 9, and others³.

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1. *Thurman v. State* (1891) 32 Neb. 224, 49 N.W. 338.
 2. Subject to some inconsistencies.
 3. *Westmoreland v. State* (1872) 45 Ga. 225; *Fogarty v. State* (1888) 80 Ga. 450, 5 S.E. 782; *Glover v. State* (1907) 129 Ga. 717, 59 S.E. 816.

Eighteen jurisdictions stated with varying degrees of explicitness, or by strong implication, that the ordinary test used as in the defence of insanity would be applicable to delusions as well, irrespective of whether the McNaghten mistake-of-fact doctrine might also apply. These eighteen jurisdictions, consisting of seventeen states and the District of Columbia, were: Alabama¹, California², Colorado³, District of Columbia⁴, Illinois⁵, Kansas⁶, Kentucky⁷, Minnesota⁸, Mississippi⁹, Missouri¹⁰,

1. Parsons v. State (1886) 81 Ala. 577, 2 So. 854.
2. People v. Willard (1907) 150 Cal. 543, 89 Pac. 124.
3. Ryan v. People (1915) 60 Colo. 425, 153 Pac. 756.
4. Guiteau's Case (1882) 10 Fed. 161.
5. People v. Geary (1921) 297 Ill. 608, 131 N.E. 97.
6. State v. Arnold (1909) 79 Kans. 533, 100 Pac. 64.
7. Banks v. Comm. (1911) 145 Ky. 800, 141 S.W. 380.
8. State v. Scott (1889) 41 Minn. 365, 43 N.W. 62.
9. Kearney v. State (1890) 68 Miss. 233, 8 So. 292.
10. State v. Paulsgrove (1907) 203 Mo. 193, 101 S.W. 27.

1 2 3 4
Montana , Nebraska , New Hampshire , New York ,
5 6 7 8
Pennsylvania , South Carolina , Texas , and Vermont .

Twenty-three jurisdictions did not express themselves upon the subject of delusion sufficiently for classification to be made. These were: U.S., Arizona, Connecticut, Delaware, Idaho, Louisiana, Maine, Maryland, Michigan, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Virginia, Washington, West Virginia, Wisconsin, Wyoming. Were the problem to be placed at issue, these jurisdictions would largely follow the weight of authority as represented by the eighteen jurisdictions noted in the pre-

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1. State v. Keerl (1904) 29 Mont. 508, 75 Pac. 362.
 2. Kraus v. State (1922) 108 Neb. 331, 187 N.W. 895.
 3. State v. Jones (1871) 50 N.H. 369.
 4. People v. Schmidt (1915) 216 N.Y. 324, 110 N.E. 945.
 5. Comm. v. Calhoun (1913) 238 Pa. 474, 86 Atl. 472.
 6. State v. Bundy (1885) 24 S.C. 439.
 7. Tubb v. State (1909) 55 Tex. Crim. 606, 117 S.W. 858.
 8. Doherty v. State (1901) 73 Vt. 380, 50 Atl. 1113.

ceeding paragraph, it is submitted.

The New Hampshire Rule As Fundamental Concept

New Hampshire evolved a rule differing from that of its sister states. Neither the knowledge test, in any of its forms, nor a special form of delusion test was held to apply. Instead, the Court returned to fundamental principles and left the question of intent or malice to the jury to determine as a matter of fact upon all the evidence including that of insanity or mental abnormality.

The history of this development was brief, but decisive. Judge Doe in 1866, dissented from his judicial colleagues in a civil case¹ on the ground that delusions were manifestations to be considered as matters of fact by the jury and not as matters of law. Boardman v. Woodman, 47 N.H. 120. Three years later the whole Court accepted this view, saying, "all symptoms and all tests of mental disease" were purely matters of fact to be determined by

1. Involving testamentary capacity.

"the jury"; the Court also noted that these instructions were wrong "by the standard of legal precedent" but were right "by the standard of legal principle". State v. Pike (1869) 49 N.H. 399. Two years later the principle laid down by Judge Doe was unanimously affirmed and readopted in another case. State v. Jones (1871) 50 N.H. 369. Judge Ladd in the latter case said, "the real ultimate question to be determined seems to be, whether, at the time of the act, he had the mental capacity to entertain a criminal intent". He also pointed out that, "It is a question of fact whether any universal test exists, and it is also a question of fact what the test is, if any there be". In other words, the jury was to accept or reject definitions and tests of mental abnormality as laid down by the medical experts in testimony, and was to consider the evidence of abnormality actually adduced, and after these factual deliberations, was to answer the fundamental legal question - was there, or was there not, a criminal intent in the performance of the criminal act.

American Summation

The principle features of the various jurisdictions in the United States have been arranged in tabular form, and presented at the end of Chapter X, as Table No. 9.

Scotland And The McNaghten Rules

Shortly after the McNaghten Rules, the Scottish case of Gibson (1844) 2 Broun 332, instructed in almost the exact language of the McNaghten¹ Rules. In view of the Scottish influence, particularly Hume, on the Rules themselves, this was not surprising. In many respects, as has been shown, Scottish law, as expressed by Hume, was reflected in English legal phraseology through the Rules.

During the late nineteenth century, it was also possible to find a treatise writer setting out the Gibson, supra, statement of the McNaghten Rules,

1. The appendix to the volume containing this case report even reprinted the McNaghten Rules.

with little additional comment as the law of
Scotland¹.

As late as 1949, Mr. C.C. Cunningham,
Permanent Secretary of the Scottish Home Department,
stated in answer to a question put by Professor
Montgomery of the Royal Commission On Capital
Punishment, that although he "hesitate(d).... to be
"precise about this ... (his) understanding (was)
"that the Scottish Courts have broadly adopted the
"principles of the McNaghten Rules as laid down
"in England"². The witness observed at a later
point that, "My information is that the Scottish
"Courts in 1844 adopted the principles of the
"McNaghten Rules, though these rules do not them-
"selves form any part of the law of Scotland"³.

1. A.M. Anderson, The Criminal Law of Scotland
(1st ed. 1892), p. 4.

2. Min. of Evid., Royal Com. Cap. Pun., 5 Aug. 1949,
p. 72, par. 474. The witness added: "accordingly,
subject, possibly to certain qualifications, the test
is whether the accused person 'suffered from such a
defect of reason or disease of mind that he did not
know the nature and quality of his act, or if he did,
that he did not know he was doing wrong'".

3. Ibid, p. 76, par. 579.

This answer seemed to imply what Professor Montgomery had indicated in an earlier question: "I think you "will agree that the McNaghten Rules are not binding¹ "on Scottish judges?" .

But in the Memorandum submitted by the Crown Agent to the Royal Commission On Capital Punishment, it was stated that "In the case of "Gibson, 2 Broun 332, heard in 1844, Lord Justice "Clerk Hope in dealing with the issue of insanity, "adopted the opinions of the English Judges in "McNaghten and the principles laid down in these "opinions would appear to have been followed by² "Judges in Scotland from that time onwards" . Upon a question asked by Sir Ernest Gowers, the reply was made that although judicial charges "may not "refer specifically to the McNaghten test ... they

1. Ibid, p. 73, par. 495.

2. Min. of Evid., Royal Com. Cap. Pun., 3 November, 1949, p. 170, par. 2 (Appendix "d" of Memorandum).

"usually direct the jury on the well-known formula¹
"of the McNaghten Rules" .

Lord Cooper, in his testimony before the Royal Commission On Capital Punishment, gave what may be regarded as the definitive answer to the question of Scottish utilization of the McNaghten Rules. In response to a question asking whether juries in Scotland were instructed in terms of the Rules, the Lord Justice General replied that, "it is "quite wrong to suppose that the McNaghten Rules in "their full vigour are current in Scotland ... I "would take as the broad rule only the third one, "that insanity arises when a person is labouring "under such a defect of reason from disease of the "mind that he does not know the nature and quality "of the act he is doing, or if he does know it, he

1. Ibid, p. 178, par. 1997. The question put by the Chairman was: "Do Scottish Judges in fact put the McNaghten test to the jury in cases where the defence of insanity has been put forward?". The reply quoted above was preceded by the observation, "In general they do not".

"does not know he is doing wrong ... I think I would
"embroider and elaborate that a bit and not leave it
"as if the last word of the decalogue had been
"uttered in the McNaghten Rules, which are not part
"of the law of Scotland"¹.

Scotland's Exculpatory Standard At Trial

The defence of insanity usually arose in
bar of trial in Scotland and, when made at trial,
was usually in terms of the doctrine of diminished
responsibility. The practical area of operations
of what has been termed the exculpatory standard at
trial (not responsible because insane at time of
the act) was therefore comparatively small.

Another difficulty was added in the fact
that the highest appellate tribunal for criminal
matters in Scotland, established in 1926, has never
had occasion to define insanity in the modern law
of Scotland.

1. Min. of Evid., Royal Com. Cap. Pun., 4 April, 1950,
p. 437, par. 5465. Lord Cooper pointed out the
revealing fact that he even "had some difficulty in
finding in Scotland a copy of the McNaghten Rules,
and ... had eventually to get them from a copy of
an English text-book".

Part of the content of the exculpatory standard could be seen in Lord Cooper's statement, *supra*, concerning the McNaghten Rules. The McNaghten knowledge test might be applied, but it would be neither binding nor a complete exposition so far as the Scottish legal system was concerned.

The first edition (1867) and the fifth edition (1948) of an authoritative modern treatise on Scottish criminal law, MacDonald, both noted the charge of Lord Justice-Clerk Hope in Smith and Campbell¹ as "most instructive"². The Faculty of Advocates, in its memorandum to the Royal Commission On Capital Punishment, considered Smith and Campbell,³ *supra*, and Gibson, *supra*, together. On the authority of five judges: Lord Justice-Clerk Hope and Lords Moncrieff and Cockburn (Smith and Campbell) and Lords

1. (1855) 2 Irv. 1.

2. J.H.A. MacDonald, A Practical Treatise On The Criminal Law of Scotland (1st ed. 1867) p. 14, and (5th ed. 1948) p. 9.

3. Min. of Evid., Royal Com. Cap. Pun., 5 April, 1950, p. 444, par. 9.

Cowan and Deas (Gibson) the Faculty derived four propositions. The first was that "The rules in McNaghten's case accurately express the law of Scotland"¹. This conclusion must be modified, it² would seem, to the extent indicated by Lord Cooper. The second proposition was a denial of moral insanity and a resultant denial of irresistible impulse "not accompanied by alienation of reason"³. Since neither the McNaghten Rules nor Hume, Alison and the prior Scottish cases had indicated approval of irresistible impulse, there would seem to be no valid reason for limiting the denial of it. Furthermore, as some of the American states indicated, irresistible impulse, that required concomitant alienation of reason, was a useless and inconsistent test. It would, therefore, seem better to simply

1. Loc. cit.

2. Min of Evid., R.C.C.P., op. cit., p. 437, par. 5465.

3. Min. of Evid., R.C.C.P., op. cit., p. 444, par.9. The proposition as stated read: "The law does not recognize moral insanity, so that an irresistible impulse not accompanied by alienation of reason, does not exempt from responsibility".

regard irresistible impulse denied as a general doctrine, rather than in the limited fashion suggested. The third proposition was a denial of partial insanity resulting in the requirement that, with respect to the critical moment, the "man must be either sane or insane"¹. To this might be added the caution that it has been held immaterial whether the cause of the insanity was chronic or temporary². The fourth proposition established³ that insanity was a jury question.

With respect to delusions, Scotland advanced a considerable distance from the mistake-of-fact formula of the McNaghten Rules. In the case of Gibson, supra, an example was given of the kind of delusion that might exempt from punishment,

1. Loc. cit. "The law does not recognize such a thing as partial insanity, so that at any one time a man must be either sane or insane".

2. MacDonald (5th ed.) 10; Milne (1863) 4 Irv. 301; Brown (1886) 1 White 93.

3. Loc. cit. "The question of insanity is for the jury to decide for themselves on the evidence generally".

i.e., delusion that the victim intended to kill the accused. This was in line with Hume and with the example of the McNaghten Rules. But by the time of ¹Milne ²and Brown ³, delusions were regarded as having raised a presumption of the requisite alienation of reason ³. And by the time of Miller ⁴, Macklin ⁵ and ⁶Barr, it could be concluded that "If a man is clearly proved to labour under insane delusions he ⁷is not of sound mind or criminally responsible".

1. (1863) 4 Irv. 301.

2. (1866) 5 Irv. 215.

3. The Faculty of Advocates concluded from the cases of Milne and Brown "That if it is proved that he was at the time under the influence of an insane delusion the law at once presumes that he could not appreciate what he was doing, so that there is no need to inquire further whether he understood what he was doing or that what he was doing was wrong". Min. of Evid., Royal Com. Cap. Pun., 5 April, 1950, p. 444, par. 10.

4. (1874) 3 Coup. 16.

5. (1876) 3 Coup. 257.

6. (1876) 3 Coup. 261.

7. Min. of Evid., R.C.C.P., 5 April, 1950, p. 444, par. 11. (Memorandum of Faculty of Advocates).

At the same time a recognition was developing that the knowledge test referred to moral wrong. It was said by Lord Justice-Clerk Moncrieff that a man had to have "a sane mind to apply his knowledge" and hence "the mere intellectual apprehension of an "injunction or prohibition", was not enough. It was charged that "a man may be entirely insane" and yet have knowledge that his act "is forbidden by law". Miller, supra. See also Macklin, supra, and Barr, supra. In the case of Sharp ¹, Lord Moncrieff's language quoted above was more fully quoted and it was additionally instructed that, "The legal view, "as developed in recent years, is that a man may be "quite in a position to appreciate the nature and "quality of his deed as an illegal act ... and may "nevertheless be insane, his insanity consisting "in a failure to recognize that the act is morally "wrong".

In Scotland, however, the coupling of a moral interpretation of wrong, a broad view of delusion, and lack of the rigidity elsewhere

1. 1927 J.C. 66.

resulting from the binding effect of the McNaghten Rules, yielded a resultant standard somewhere between that of strict application of a McNaghten knowledge test and the New Hampshire rule. The testimony of the Permanent Secretary of the Scottish Home Department in response to a question by an English barrister, Mr. Fox Andrews, revealed how closely Scottish practice might approach the New Hampshire rule. It was asked, "There is no objective test "given by the presiding judge in that case?" The answer was, "No, sir, I think it is left to the "jury on the evidence which has been led to make up "their own minds"¹ . Again it was asked, "...putting "it in popular language, it rather sounds as though "in effect (the judge) says: 'Looking at the whole "'of the evidence, do you think this man is insane "'or not?'"² . The reply was still affirmative . The witnesses representing the Faculty of Advocates were asked, "Does it really amount to this, that you

1. Min. of Evid., R.C.C.P., 5 Aug. 1949, p. 78, par. 612.

2. Ibid, par. 613.

"think it wise in Scotland not to have any formula,
"but just to leave the issue as a question of fact
"to the jury?". Once again an affirmative reply¹
was received. Lord Cooper was asked, "We have been
"given this answer, that in Scotland the presiding
"Judge would say in effect to the jury, - 'Looking
"at the whole of the evidence, do you think this
"man is insane or not?' - and leave it at that?".
The Lord Justice General replied, "It might be left²
"like that, but I should not leave it there".
That summed up the present Scottish situation: an
instruction in McNaghten language might properly
be given, or one as general as the New Hampshire
rule might be given, but the highest judicial
officer of Scotland would, himself, not give
instructions limited to either extreme.

The reason for the Scottish tendency to
avoid sole reliance on a formula or test, such as

1. Min. of Evid., R.C.C.P., 5 April, 1950, p. 449,
par. 5620.

2. Min. of Evid., R.C.C.P., 4 April, 1950, p. 438,
par. 5477.

the McNaghten Rules postulated, was also made clear by Lord Cooper. He observed that: "I think myself "that however much you charge a jury as to the "McNaghten Rules or any other test, the question "they would put to themselves when they retired is -
"Is the man mad or is he not?"¹ . Nor may Scottish juries be considered unique in that respect. Lord Cooper's observation prompted Mr. Fox-Andrews to comment, "... experience as Counsel in England "seems to indicate that there is a great deal in "what your Lordship says"² . It might be added that within the experience of the writer, American juries react in the same manner.

If a summation of the present standard in Scotland were to be attempted, it might well be expressed in the manner employed by the Faculty of Advocates: "The test of insanity now used is "complicated and difficult to express ... It might "now be stated as whether the accused had or had not

1. Ibid, par. 5479.

2. Ibid, par. 5480.

"a sane understanding of the circumstances of his
¹
"act?" .

Scotland And Insanity In Bar Of Trial

A strict interpretation of the subject matter of this thesis would exclude the preliminary issue, or insanity in bar of trial as it is known in Scotland, from consideration; since it is not actually a test of responsibility, but is rather a matter of determination of fitness to plead. The relation of the preliminary issue in Scotland to the special defence of insanity in exculpation was so close, that it could not be ignored. That relationship stemmed from the fact that so many cases that would have gone to trial in England or the United States were disposed of in Scotland by a plea in bar of trial.

The statistics of the Scottish Home Department indicated that during the period 1900 to 1948, inclusive, 104 persons were found insane and unfit to plead while only 23 were found to have been insane

1. Min. of Evid., R.C.C.P., 5 April, 1950, p. 444, par. 12.

at the time of the act¹. The witnesses representing the Faculty of Advocates, before the Royal Commission On Capital Punishment, agreed it was "a legitimate inference" from the above figures "that in Scotland the test of insanity as deciding whether a man is fit or unfit to plead is of much more practical importance than the test of insanity which justifies what would be a verdict in England of guilty² but insane". Mr. Gordon, the Crown Agent, testified that, "It is not usual to come across a case where insanity at the time of the offence is pleaded in defence. It is more usual to find insanity³ in bar of trial". Lord Cooper spoke of the special defence of exculpatory insanity as "extraordinarily rare". He noted that the "normal case... is that insanity is pleaded to stop the trial" and stated that he could not "recall having ever conducted a trial where insanity was pleaded to avoid⁴ conviction".

1. Min. of Evid., R.C.C.P., 5 Aug. 1949, p. 65 (Appendix II, Table I).

2. Min. of Evid., R.C.C.P., 5 April 1950, p. 448, par. 5611.

3. Min. of Evid., R.C.C.P., 3 Nov. 1949, p. 181, par. 2071.

4. Min. Of Evid., R.C.C.P., 4 April 1950, p. 437, par. 5465.

Insanity in bar of trial could be raised
by defence counsel¹, or by the prosecution², or by
the Court, ex proprio motu³. The Court could either
(1) "hold a preliminary inquiry as to the mental
"condition of the accused" or (2) call upon him to
plead, "leaving it to the jury to say whether he is
"capable of pleading"⁴. If the defence maintained
fitness to plead, the Court could still leave the
matter to the jury⁵. Mental deficiency could not be
brought in issue in bar of trial⁶; the Mental

1. MacDonald, *Crim. Law. Scot.*, (5th ed.) p. 271.

2. Alex. Robertson (1891) 3 White 6; MacDonald, *op. cit.*

3. MacDonald, *op. cit.*, citing Alison i. 659-660; John Warrand 1825 Shaw 130, and others.

4. *Loc. cit.*, and *Min. of Evid.*, R.C.C.P., 3 Nov. 1949, p. 170, par. 5. Both sources cited the cases of Brown (1907) 5 Adam 312, Sharp 1927 J.C. 66, and Wilson 1942 J.C. 75, as authority.

5. Brown and Wilson. See preceding note.

6. Patrick Breen, 1921 J.C. 30.

Deficiency and Lunacy (Scotland) Act, 1913, had no application to cases involving capital punishment. As the Crown Agent noted in response to a question by Professor Montgomery, before the Royal Commission On Capital Punishment, the procedure generally had been "that the evidence is laid before the Judge by "the defence on the basis of evidence supplied¹ "by the Crown" .

When the issue in bar of trial was decided by the jury, again a broad, general statement seemed to be preferred to the narrower confines of a specific test or formula. Section 86 of the Lunacy (Scotland) Act, 1857, provided that a person "found "insane, so that such person cannot be tried ... or "if upon the trial of any person so indicted such "person shall appear to the jury ... to be insane", confinement during His Majesty's pleasure was to be ordered. Lord Justice General Dunedin, in dealing² with those requirements in the case of Brown , said,

1. Min. of Evid., R.C.C.P., 3 Nov. 1949, p. 180, par. 2052.

2. 1907 S.C. 67.

"Acts of Parliament cannot deal with scientific
"opinions, and therefore it is left to come to a
"common sense determination on the matter".
The sole guide, apart from any inferences from the
evidence led, was the judicial instruction that
insanity meant that "which prevents a man from doing
"what a truly sane man would do and is entitled to
"do, maintain in sober sanity his plea of innocence
"and instruct those who defend him as a truly sane
"man would do". Under such a charge, the physician
was relatively unhampered in the testimony he could
present for the jury to consider. The role of
medical testimony was, therefore, relatively large
in the Scottish plea in bar of trial, when compared
either to the preliminary issue or the exculpatory
defence in Anglo-American law.

Where, as most frequently happened, the
judge decided the question of insanity in bar of
trial, without submitting it to a jury, the medical
testimony was still of paramount importance. Lord
Cooper observed that "in the great majority of cases
"where insanity is pleaded either in bar of trial
"or to elude conviction, the expert testimony of

"eminent alienists, with or without factual evidence,¹
"places the matter beyond all reasonable doubt" .
At another place, the same high authority testified,
that if the Crown discovered insanity and made that
information known to the defence, as would happen
in Scotland, and "if Sir David Henderson and one or
"two other alienists are satisfied that (the accused)
"is insane, then the thing is finished"² .

The standard employed by the psychiatrists
in Scotland was explained by Sir David Henderson,
testifying before the same Commission. He stated
his belief "that if a person can be certified as
"mentally unsound, then that person need not
"necessarily undergo a trial"³ . The same authority
also indicated it would be "a very fair way of
"putting it" to say that "all those who are certifi-
"able ought not to stand their trial"⁴ . This was

1. Min. of Evid., R.C.C.P., 4 April 1950, p. 429,
par. 12 (Supplementary Memorandum Submitted by the
Lord Justice General).

2. Ibid, p. 439, par. 5491.

3. Min. of Evid., R.C.C.P., 6 April 1950, p. 464,
par. 6313.

4. Ibid, par. 6314.

more than a mere statement of what ought to obtain, however. The Royal Commission was also told that this was the practical medical approach to the problem in Scotland: "I think the certifiability and the unfitness to plead run together. I never attempt to separate them. I cannot think of a person who is unfit to plead who is non-certifiable and, on the other hand, I always regard a person¹ who is certifiable as being unfit to plead".

Conclusions And Recommendations

To dispose of the problem of insanity without a protracted trial on the issue, as so often happened in Scottish practice (due to the large scope of the plea in bar of trial), was a consummation not to be overlooked. It could not, however, be recommended for other jurisdictions. The reasons for its success in Scotland were in large measure peculiar to that country, and in any jurisdiction where they did not obtain in equal measure, the drawbacks of the procedure would outweigh its advantages.

1. Ibid, p. 465, par. 6341.

There were two reasons in particular for the relative success in the Scottish method of disposing of insanity in bar of trial, rather than at trial as a special defence. In the first place the Crown itself generally supported the plea in bar of trial, and indeed often made the very evidence, upon which the plea rested, known and available to the defence ¹. The nature of the adversary proceedings in the United States (and probably England) would lead the prosecution to oppose the defence plea almost as a matter of course. In the second place, the caliber of medical testimony in such cases in Scotland was appreciably higher than either in the United States or in England. While both the latter places had enough medical men of

1. Lord Cooper pointed this factor out, saying: "... a plea in bar of trial is presented with, generally, the support of the Crown ...". Min. of Evid., R.C.C.P., 4 April 1950, p. 437, par. 5461. At another place he spoke of "the Crown discover(ing) the man is insane - and especially when 'poor' counsel are employed for the purpose of conducting the defence - the Crown in a murder trial in Scotland invariably make available to the defence all the information in their possession ...". Ibid, p. 439, par. 5491.

eminence, they did not utilize their services to as great an extent as Scotland. Lord Cooper observed that "in practice the evidence tendered to the court and the jury in Scotland is of the highest ¹eminence". Such a standard of medical excellence could easily be fostered in a nation whose advocates were centered in a city with an exceptionally high medical tradition. That standard also could easily be preserved in a legal system whose Bench and Bar were closely knit and compact. But where medical standards varied from very high to very low, and where Bench and Bar were relatively fragmented, the standard could only sporadically be maintained, or even achieved.

Failing the positive aspects of the Scottish plea in bar of trial, the disadvantages of

1. Ibid, p. 441, par. 5529. The Lord Justice General also testified that "the alienists employed by the Crown, and employed by the defence too, have included the most eminent names in psychiatry in all its aspects available in Scotland men like Sir David Henderson".

disposing of the bulk of cases at that level became of more moment. The most striking criticism that could be made of the practice was that it removed the opportunity for a man to be cleared of imputation of a crime that he may not have committed. While the Scottish practice permitted trial upon recovery, it was seldom resorted to because the lapse of time made production of evidence unduly difficult. The individual was left with the stain of indictment, and public assumption that he had committed a criminal, often heinous act. Still another aspect to be considered was the psychological effect on the accused himself if he were deprived of what he might well regard as his legal right to be tried. Sir David Henderson admitted that some individuals tended to resent the procedure ¹.

1. Min. of Evid., R.C.C.P., 6 April 1950, p. 464, par. 6311. "I have had similar experience here with prisoners who have stated afterwards that they were never called to assize, never had trial, had never been proved guilty or not guilty - that had merely been charged in an arbitrary way as being mentally disordered. They tended to resent that".

On the whole, it must be submitted that shifting the incidence of disposing of the cases of insanity from the exculpatory trial level to the plea in bar of trial level was a procedure of limited utility. It might work perfectly well (as indeed it apparently has) in the special circumstances prevailing in Scotland, but it could not be recommended for general adoption elsewhere, either in England or in the United States.

With respect to the choice amongst the varieties of McNaghten or other knowledge tests, little advantage could be discerned in any one formulation over another. Each presented difficulties of its own and none possessed special merit. The extent and complexity of difficulties were best illustrated in the jurisdictions of the United States. It could not be said that closer adherence to McNaghten language, or to the English interpretation, made any appreciable difference in effectiveness or lack of difficulty¹. The interpretation of wrong

1. Sir David Henderson testified before the Royal Commission, "I have often thought that the McNaghten Rules ... make it too easy for the presiding Judge... (who) ... instead of exercising his discrimination, falls back easily on the McNaghten Rules, and he says- 'Here we have a formula, let us try and apply it'". Min. of Evid., R.C.C.P., 6 April 1950, p. 468, par. 6407.

as morally wrong was of greater value than the limitation of the concept to mean illegal. The abandonment of the mistake-of-fact delusion doctrine of the McNaghten Rules was a valuable advance, and few jurisdictions still cling to the older view. But even with these clarifications and relative advances, the varieties of knowledge test remained subject to the same serious and fundamental criticism - namely, only cognitive defect or intellectual aberration can be adequately embraced within the test concept. It may be submitted that defect or aberration of feeling or emotion stemming from mental disease must also be included if an adequate test or definition of responsibility is to be achieved. Another vital defect of the various knowledge tests was that they either owed their origin to the McNaghten Rules or became associated with the Rules by virtue of fundamental similarities. This meant that the rigid categorization and lack of freedom to develop in the usual common law manner

1

became a characteristic of each of the knowledge tests (with the exception of Scotland where English law was not a major factor as in the United States). No variety of the knowledge test, standing alone, can therefore be recommended as the criterion for lack of criminal responsibility, in any jurisdiction.

Among what have been termed the basic concepts, the choice would, therefore, seem to narrow down to either the Scottish exculpatory standard or the New Hampshire rule. Whether the problem area created by the inadequacies of the basic concepts in general can be resolved by other means, such as irresistible impulse or the doctrine of diminished responsibility, must be reserved for the conclusions of the ensuing Chapter X.

1. Ibid, par. 6406. "I am impressed by the fact that in court one hears the arguments over and over again - whether the person understands the nature and quality, and so on, and you go through it regularly. You have the same arguments put forward, and it does not seem really to mean anything very much. You never get any further with it".

If the Scottish exculpatory standard may rightly be regarded as somewhere between the knowledge test and the New Hampshire rule (and partaking somewhat of both), then certain arguments aimed against abandonment, in whole or in part, of the McNaghten type formulation, should be considered with respect to both Scotland and New Hampshire. It has been said that the very rigidity of a McNaghten type formulation constituted a yardstick which it was essential that a jury be given. The obverse of the same argument was the contention that standards as broad as those of Scotland and New Hampshire were too loose and indefinite, and made the measure of justice a matter of a jury's mood or background. The argument was too serious to ignore, for if true it utterly condemned the New Hampshire rule, and partly, possibly largely, condemned the Scottish standard.

The answer to the first side of the contention was indicated by Lord Cooper, who cut to the heart of the matter by pointing out that "what would matter would be how the jury applied "the yardstick to the facts, not what yardstick they

¹
"used" . The answer to the second side of the contention may be stated as simply this: no amount of reading of cases in comparative jurisdictions alters the fundamental fact that the two jurisdictions, Scotland and New Hampshire, that, in part or in whole, abandoned strict McNaghten formulation for a less rigid standard, yielded no such harvest of wild and capricious jury findings, as the argument implied. While it cannot be reduced to a matter of statistics, it is submitted that the general, but unmistakable, impression resulting from an extensive comparative reading of cases, showed the same incidence of variation, or lack of it, in jury findings in the knowledge test jurisdictions as in Scotland or New Hampshire. It might be added that juries are neither metaphysicians nor legal scholars, and the narrower and more rigidly confined the test,

1. Min. of Evid., R.C.C.P., 4 April 1950, p. 438, par. 5479. Lord Cooper added, as previously noted, "I think myself that however much you charge a jury as to the McNaghten Rules or any other test, the question they would put to themselves when they retired is - 'Is the man mad or is he not?'".

the more apt would the jury be to ignore it or misapply it. A broader statement would run a lesser risk in that respect.

It has also been suggested that Scotland might do without the McNaghten Rules because its verdict was based on a majority vote, while in England, where unanimity was required, a ratio decidendi was essential¹. The short and decisive reply to such a view was indicated by the fact that New Hampshire, which did without the McNaghten Rules even more completely than Scotland, required unanimity in its jury verdicts just as England.

It would be a mistake to regard the Scottish and New Hampshire standards as completely formless. Some attempt has been made to show the outlines of those forms in this thesis. It may be submitted that to the extent that each of the two

1. Suggested, but not necessarily contended, by Mr. Radzinowicz of Cambridge University, sitting as a member of the Royal Commission On Capital Punishment. Min. of Evid., R.C.C.P., 4 April 1950, p. 440, par. 5510.

jurisdictions departed from a strict knowledge test, it was to replace it with the broad, fundamental principles of criminal law (i.e., was there criminal intent, or mens rea), rather than to leave a void. The knowledge test was an evolutionary product in aid of these principles, and not a higher fiat. If that aid has outlived most of its usefulness, as indicated by the variety of problems it has itself created, it may be abandoned, in whole or in part, without disturbing those principles it can no longer help to interpret as well as it once was able.

A standard similar to that of New Hampshire or Scotland (the exculpatory standard, not the plea in bar of trial) may therefore be recommended in preference to a strict knowledge test or pure McNaghten formula. These should be supplemented, it will be submitted, and the manner of so doing indicated in the ensuing chapters.

It might also be recommended that such change as the above should be by way of common law development rather than statute. Both Scotland and New Hampshire developed in the common law manner, it must be remembered. Furthermore, the most

disastrous single effect of the McNaghten Rules probably was the fact that they froze the law much as a statute does. With respect to the basic concepts, there has already been too much rigidity and a statute would add more. The law now needs flexibility and must attain it in the most flexible manner - through the common law.

Finally, neither New Hampshire nor Scotland can be recommended over the other. So long as a substantial measure of flexibility has been introduced into the basic concept of non-responsibility, the knowledge test may be retained in those cases where it may still be felt to be of aid, or entirely abandoned if it be regarded as having outlived all its utility. The facts of each particular case could best determine the answer, and common law development could best answer it for each jurisdiction. Two examples of such common law development, it is submitted, are not enough to warrant dogmatism with respect to the preferable form for the remaining highly individualistic jurisdictions.

CHAPTER X

THE PROBLEM AREA: LEGAL ALTERNATIVES

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| England: Early Rejections Of Irresistible Impulse | 465 |
| England: Early Acceptances Of Irresistible Impulse | 467 |
| England: The Present Attitude Toward Irresistible Impulse | 468 |
| England: Other Attempts At Solutions | 476 |
| America: Jurisdictions Accepting Irresistible Impulse | 480 |
| America: Jurisdictions Denying Irresistible Impulse | 497 |
| America: Inconsistent Denials Of Irresistible Impulse | 498 |
| America: Doctrine Of Diminished Grade Of Offence Rejected | 508 |
| America: Doctrine Of Diminished Grade Of Offence Accepted | 511 |
| Scotland: The Doctrine Of Diminished Responsibility | 515 |
| Conclusions And Recommendations | 524 |
| Table No. 9 | 537 |
| Table No. 10 | 543 |

With few exceptions, some variation of the knowledge test found expression as the fundamental test for lack of criminal responsibility where a defence of insanity was raised at trial. Yet consistently there has been dissatisfaction expressed with so limited a criterion, since it was adequate only with respect to disorders of cognition, while modern medicine increasingly stressed the importance of disorders of feeling and emotion. In addition, medicine was at variance with the tendency of law to ignore continuity and stress categorization in establishing legal tests. Both these aspects combined to create what may be called a problem area.

Different jurisdictions utilized different methods of solution or attempted solution of the problems within the area of difficulty. The principle methods in England, the United States of America¹ and Scotland remain to be examined and comparatively evaluated. In total number of cases and jurisdictions, irresistible impulse loomed

1. Herein usually referred to simply as America.

largest as an attempt at solution. Two other methods were highly important: (1) the American techniques of reducing the grade of offence where insanity was established, and (2) the effective Scottish doctrine of diminished responsibility. There were additional sporadic attempts at solution in other ways, but the three methods mentioned (irresistible impulse plus the above two) constituted the principal legal alternatives.

England: Early Rejections of Irresistible Impulse

The implicit rejection of irresistible impulse in the McNaghten Rules was reflected explicitly in a number of English cases during the next quarter century. In 1848, Baron Parke stated in *R. v. Barton*¹ that "the excuse of an irresistible impulse co-existing with the full possession of the reasoning powers can find no countenance in the law of England". During the same year, *R. v.*

1. (1848) 3 Cox. 275.

¹
Stokes ruled to similar effect. Two years later
in R. v. Pate, Baron Alderson noted that "The law
"does not acknowledge the doctrine of an uncontrolla-
"ble impulse if the person was aware that it was a
"wrong act he was about to commit". In R. v. Haynes ²
in 1859, Baron Bramwell observed that "if an
"influence be so powerful as to be termed irre-
"sistible, so much the more reason is there why we
"should not withdraw any of the safeguards tending
"to counteract it". Four years later further
affirmation was accorded by Wightman J. in R. v.
³
Burton who ruled that "a state of mind in which
"a man, perfectly aware that it was wrong to do so,
"kills another man under an uncontrollable impulse
"is no defence for a crime". It might be pointed
out that only when the accused had been aware that
his act was wrong did irresistible impulse become

1. (1848) 3 Carr. & Kir. R. 185.

2. (1859) 1 F. & F. 666.

3. (1863) 3 F. & F. 772.

of moment, since otherwise the knowledge test constituted an adequate defence.

England: Early Acceptances of Irresistible Impulse

During roughly the final quarter of the nineteenth century various cases arose that recognized irresistible impulse as a possible defence. In R. v. Jordan in 1872, Baron Martin left it for the jury to consider for "when such impulses "come upon men, according to the medical evidence "they were unable to resist them". He advised that "It would be safe in such a case to acquit the "accused on the ground of insanity". The pressure to have the law recognize irresistible impulse stemmed from the physicians, it will be noted. That had been the situation in McNaghten's trial, and continued to be the situation in the twentieth century. Eleven years after Jordan, Mr. Justice Kay was reported to have charged in R. v. Gill that, "if a man's mind was in such a diseased condition "that he was subject to uncontrollable impulse, "they would be justified in finding him irresponsi- "ble for his actions; that what the jury had to ask "themselves was, Was the prisoner's mind subject to

"an uncontrollable impulse over which his will had
"no power? If so they must acquit on the ground of
"insanity". Stephen, both as treatise writer in his
"Criminal Digest" and as judge, in R. v. Davis¹,
had indicated a close sympathy with the irresistible
impulse defence.

England: The Present Attitude Toward
Irresistible Impulse

During the period up to 1907, when the Criminal Appeal Act instituted a Court of Criminal Appeal, there had been no final ruling by an appellate Court on the question of irresistible impulse. Hence fluctuation in trial court jury charges, which were not binding upon one another however persuasive they might be. Before the Criminal Appeal Act, summations by the Court were largely unrecorded and unobserved, except for the relatively rare instances where points were reserved for consideration. After the Act, summations were almost as a matter of course brought up for appellate consideration, if there had not been an acquittal.

1. (1881) 14 Cox. 563.

In roughly the first quarter of the twentieth century a number of important cases came up for review. In the case of *R. v. Holt*¹ it appeared that the trial court had either accepted irresistible impulse or gone a long way toward it. In the even more noteworthy case of *R. v. True*², Mr. Justice McCardie summed up by saying: "I shall "put this point to you - that even if the prisoner "knew the physical nature of the act, and that it "was morally wrong and punishable by law, yet was "he through mental disease deprived of the power "of controlling his actions at the same time? "If 'yes', then, in my view of the law, the verdict "should be 'guilty, but insane' ...". The irresist-³ible impulse doctrine had appeared in other twentieth century cases before Holt and True, but the latter two were more significant.

1. 15 Cr. App. R. 10.

2. (1922) 16 Cr. App. R. 164; Trial of Ronald True (Edited by D. Carswell: Not. Brit. Tr. Ser.) Edin. 1925.

3. *R. v. Hay* (1911) 22 Cox. 268; *R. v. Fryer* (1915) 24 Cox. 403; *R. v. Jolly* (1919) 83 J.P. 296; and to a limited extent in *R. v. Jones* (1910) 4 Cr. App. R. 207.

The Lord Chief Justice, Mr. Justice Greer, and Mr. Justice Acton heard the True Appeal. Mr. Justice Greer, who had been trial judge in the Holt case, took the opportunity to observe that he had not been accurately reported in that proceeding, and that he had followed the McNaghten definition, but that "if a man's will power was destroyed by "mental disease it might well be that the disease "would so affect his mental powers as to destroy "his power of knowing what he was doing, or of "knowing that it was wrong". With due deference to the learned jurist, the fact remains that under such circumstances there would ne bo need to raise the question of irresistible impulse at all, and the defence would hardly be likely to do so. It was only in those instances where the knowledge test would not aid the defence that irresistible impulse was likely to be raised. With respect to the True appeal, which was dismissed, the Court of Criminal Appeal observed that the summation at the trial level could not be criticized on the ground that it had harmed True or his case, having been in his

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favour insofar as it dealt with irresistible impulse.
The appellate Court also held that there was "no
"foundation for the suggestion that the rule derived
"from McNaghton's case has been in any sense
"relaxed". In short, irresistible impulse alone
was not sufficient, and the requirements of the
McNaghten knowledge test had still to be met.

2

In R. v. Kopsch in 1925, the issue of
irresistible impulse was again raised and rejected.
Lord Hewart, presiding as Lord Chief Justice, made
his language so strong as to admit of no doubt, if

1. The Court reasoned that: "the learned judge
clearly put it to the members of the jury that even
if the prisoner knew the physical nature of his act,
and knew that it was morally wrong and punishable
by law, and yet was from mental disease deprived
of the power of controlling his actions at the time,
the verdict should be 'Guilty, but insane'. Never-
theless, the jury, after having that extension of
the rule laid before them, found that the appellant
was guilty of wilful murder. Whatever criticism
may be excited by the summing-up, it is not
criticism from the point of view of the appellant".

2. (1925) 19 Cr. App. R. 50.

doubt there still could be after R. v. True. He spoke of "the fantastic theory of uncontrollable impulse which, if it were to become part of our criminal law, would be merely subversive. It is not yet part of the criminal law, and it is to be hoped that the time is far distant when it will be made so". There were still doubters, however.¹ Sullivan took the view that there was no evidence in either case, True or Kopsch, to support irresistible impulse and hence it was not in issue and the Court of Criminal Appeal pronouncements were only persuasive. If so, it must in all seriousness be noted that the force of Lord Hewart's language had the persuasive effect of a bludgeon. More to the point was the fact that the law had obviously not laid down any special criteria for the kind of evidence it would take to establish a doctrine that was only being contended for. Hence in Kopsch, for example, in the application for leave to appeal, it was argued that the act was done under the influence of the subconscious mind, and that meant under the

1. Crime and Insanity, p. 231.

influence of an impulse which by virtue of mental disease could not be controlled. It is difficult to see why such an argument should not squarely raise the issue of irresistible impulse. And, of course, in the McNaghten trial, testimony of irresistible impulse, expressly so-called, had been in evidence, yet the Rules had implicitly rejected the doctrine, as has been submitted. The Rules themselves were certainly in issue in Kopsch. On the whole, it is submitted, Kopsch must be treated as a rejection of irresistible impulse.

Nonetheless, a year later in R. v. Flavell¹ the issue was again presented. Counsel contended that the uncontrollable impulse should be accepted in view of the Atkin Committee conclusions. Sankey J. struck down this view by saying "not only that the rules in McNaghten's Case stand at present, but also that if we were to alter them to give effect to the contentions of counsel we should be going further than interpreting those rules". In

1. (1926) 19 Cr. App. R. 141.

1

Sodeman v. The King¹, an Australian case ten years later, the Privy Council also disapproved irresistible impulse.

Nor was such case law the only source of the pressure that had been exerted in behalf of irresistible impulse. In 1923, following the True case, the Lord Chancellor, Viscount Birkenhead appointed a Committee under Lord Justice Atkin to consider changes in practice and procedure where insanity was raised as a criminal defence. The Committee reported² in favour of altering the law so as to make irresistible impulse due to insanity a defence. The British Medical Association had adopted the same view before the Committee. In 1924, Lord Darling moved the Criminal Responsibility (Trials) Bill whose provisions were to like effect, but the Bill was withdrawn after being opposed by several of the Law Lords. In 1950, the Council of the British Medical Association, in its memorandum,

1. (1936) 55 Commonwealth L.R. 192.

2. Cmd. 2005.

submitted to the Royal Commission on Capital Punish-¹ment gave further support to irresistible impulse .
The memorandum of the Institute of Psycho-Analysis submitted to the same body adopted the suggestion² of the British Medical Association .

The significance of this impressive weight of opinion in favor of irresistible impulse, it is submitted, was the inescapable indication that a gap existed in the criminal law of insanity which required filling. The most popular single means advocated in England has been irresistible impulse despite the fact that the doctrine was ultimately rejected. Whether this doctrine considered in relation to others constituted the best solution will be considered elsewhere. It is being examined here only because its very existence points to the co-existence of a problem area in English law, and to some extent defines it. Irresistible

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1. Minutes of Evidence, R.C.C.P. p. 318 (3 Feb.1950).
 2. Minutes of Evidence, R.C.C.P. p.547 (1 June 1950).

impulse has been advocated, particularly in recent times, on the ground that it would meet the problem of "disorder(s) of emotion"¹ recognized by medicine as part of "disease of the mind" but not so recognized by the McNaghten Rules. The Rules, of course, were limited to cases of "defect of reason". Cases where the feelings, affections, or emotions in general, were disordered had not been adequately dealt with in the trial court (irrespective of any subsequent royal clemency). They might have been, either by irresistible impulse or some other doctrine, had not the McNaghten Rules so thoroughly frozen English common law development in terms of cognitive defect.

England: Other Attempts At Solutions

Other means were in some small measure attempted in order to solve the problem, although irresistible impulse remained the principal line of attack. One of the alternative means attempted in England was through the establishment of a

1. Memo., British Medical Ass'n., op. cit., 318.

subjective standard of provocation in cases of mental illness, diminishing responsibility from murder to manslaughter. The attempt failed. Thus in R. v. Lesbini¹, Lord Reading summarized the contention by saying: "It substantially amounts to "this, that the Court ought to take into account "different degrees of mental ability in the prisoners "who come before it, and if one man's mental ability "is less than another's it ought to be taken as a "sufficient defence if the provocation given to that "person in fact causes him to lose his self-control, "although it would not otherwise be a sufficient "defence because it would not be a provocation which "ought to affect the mind of a reasonable man". The Court refused to accept the doctrine holding: "This "Court is certainly not inclined to go in the "direction of weakening in any degree the law that "a person who is not insane is responsible in law "for the ordinary consequences of his acts".

1. (1914) 3 K.B. 1116.

The Infanticide Act of 1922 and the subsequent Infanticide Act of 1938 took one particular class of case out of the English problem area. Until 1922, a woman who killed her baby was guilty of murder unless she could meet the standard of non-responsibility of the McNaghten Rules. Technically and psychologically, she rarely could, for her condition typically involved disorder of emotion rather than of intellect. However, juries were wont to give her great leeway in their considerations. They might, therefore, bring in a finding of insanity, if that were the defence, even though the mental disorder did not actually involve "defect of reason". But as R. v. Harding¹ indicated, this might result in a fate almost as bad, or worse, than if the jury had not been so sympathetic. The Infanticide Act reduced the crime to manslaughter. In effect, it diminished responsibility for a particular class of persons who at the time of the act could not be regarded as insane in the McNaghten sense, nor as wholly sane, since clearly there was

1. (1908) 1 Cr. App. R. 219. Case discussed, supra, under "temporary insanity".

some disorder of emotion. The Infanticide Act may, therefore, be regarded as having solved one kind of problem within the English problem area.

In Courts of summary jurisdiction a practical, ad hoc solution for the relatively few and minor problem cases coming before them has usually been achieved. The individuals affected fall largely within that area of psychopathic states termed "the petty delinquent class" of the "predominantly inadequate or passive" group by Sir D.K. Henderson and Dr. R.D. Gillespie¹. Kleptomanias, pyromanias and pathological petty swindling, are illustrative. Courts of summary jurisdiction have not in English practice held such cases to the strict accountability of the McNaghten Rules. Indeed, in R. v. Codere², it seemed that high judicial recognition and approval of this practice might be construed into a different legal test for

1. Textbook of Psychiatry, p. 312 et. seq.

2. (1916) 12 Cr. App. R. 21.

Courts of summary jurisdiction. The Chief Justice, in dealing with the meaning of "wrong", had arrived at a particular view of the law embodied in the McNaghten Rules when he added, "There may be minor "cases before a Court of summary jurisdiction where "that view may be open to doubt".

America: Jurisdictions Accepting
Irresistible Impulse

Sixteen jurisdictions of the United States have unequivocally accepted irresistible impulse as a test for lack of criminal responsibility where a defence of insanity has been raised. These included the United States as a federal jurisdiction, the District of Columbia as a separate federal sphere, and the following fourteen states: Alabama, Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Michigan, Montana, Ohio, Vermont, Virginia, and Wyoming. In addition, three states, Louisiana, Massachusetts and New Mexico have apparently recognized the doctrine. While some questions still exist with respect to the latter three places (and possibly the United States), on the whole the foregoing nineteen jurisdictions may be said to have recognized the test.

Two other states, Utah and Washington, constituted a very much more doubtful category and could not be considered with the others. Utah seemed to recognize the doctrine but with such serious inconsistency that it could not be listed as an irresistible impulse state. Washington had to be classed as simply questionable since the evidence was so scant.

Ohio was the first American state to approve irresistible impulse. In 1834, instructions were given that the accused had to have "power to forbear or to do the act". *State v. Thompson* (1834) Wright's Ohio Rep. 617, 622. Nine years later, during the same year that the McNaghten Rules were laid down, the jury in another case were told to consider the question, "Was the accused a free agent in forming the purpose to kill?". *Clark v. State* (1843) 12 Ohio Rep. 483, 495. Ten years later it was intimated that the "free agent" concept meant that irresistible impulse was a recognized defence. *Farrer v. State* (1853) 2 Ohio St. 54. Subsequently, the appellate court stated the recognition more strongly (again based upon "free agent") in a much cited decision. *Blackburn v. State* (1872) 23 Ohio

St. 146.

While medical testimony continued to link moral insanity and irresistible impulse during the middle and last half of the nineteenth century (as the evidence in McNaghten's trial clearly demonstrated), American Courts, including those of Ohio, proved reluctant to accept moral insanity even though irresistible impulse was recognized. Thus irresistible impulse due to mental affliction was distinguished, in Ohio, from "moral insanity, "supposing this latter term to be a supposed "insanity of the moral system, co-existing with "mental sanity". State v. Adin (1876) 1 Ohio W. Bull. 38. The originator of the term "moral insanity," Dr. J.C. Prichard, might well have regarded this definition laid down more than forty years later

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as a rather gross over-simplification¹. Furthermore, the actual cases relied upon by Prichard could not have repelled the judicial mind since, as Havelock Ellis pointed out, these people were "clearly insane" in far more than 'moral' respects, and would now "undoubtedly be considered insane without resort to
²
"that conception". Since the medical basis for nineteenth century irresistible impulse was rejected in the United States, it may be concluded, and it is submitted, that ordinary legal principles were the authority for the doctrine. Those principles were summarized by Blackstone in a fashion which almost in itself suggested the formulation of an

1. Sir D.K. Henderson, Psychopathic States, p. 11 et. seq. discussed the Prichard view of 1835 in its historical medical context. Prichard's exact wording was there quoted as "There is likewise a form of mental derangement in which the intellectual faculties appear to have sustained little or no injury, while the disorder is manifested, principally or alone, in the state of the feelings, temper or habits. In cases of this nature, the moral and active principles of the mind are strongly perverted or depraved; the power of self-government is lost or greatly impaired and the individual is found to be incapable, not of talking or reasoning upon any subject proposed to him, but of conducting himself with decency and propriety in the business of life".

2. The Criminal (1901 ed.) p. 33.

irresistible impulse doctrine: - "All the several
"pleas and excuses which protect the committer of
"a criminal act from the punishment which is other-
"wise annexed thereto, may be reduced to this single
"consideration, the want or defect of will"¹ .

Other American States took the Ohio view
and accepted irresistible impulse while distinguish-
ing it from, or otherwise rejecting moral insanity.
Those who did so in fairly clear terms were:
² Illinois , ³ Alabama , ⁴ Arkansas , ⁵ Colorado , ⁶ Indiana ,
⁷ and Kentucky .

1. 4 Bl. Com. 21.

2. People v. Spencer (1914) 264 Ill. 124, 106 N.E. 219.

3. Boswell v. State (1879) 63 Ala. 307, 35 Am. Rep. 20; Parsons v. State (1886) 81 Ala. 577, 2 So. 854; Wade v. State (1921) 18 Ala. App. 322, 92 So. 97.

4. Watson v. State (1928) 177 Ark. 708, 7 S.W. (2d) 980.

5. Oldham v. People (1916) 61 Colo. 413, 158 Pac. 148.

6. Goodwin v. State (1884) 96 Ind. 550; Sharp v. State (1903) 161 Ind. 288, 68 N.E. 286.

7. Banks v. Comm. (1911) 145 Ky. 800, 141 S.W. 380.

In Illinois, the earliest cases on irresistible impulse were highly questionable as support for the doctrine since they required the impulse to obliterate the sense of right and wrong.¹ Hopps v. People (1863) 31 Ill. 385, and others . This was little more than a knowledge test in different trappings. Later cases effected a practical introduction of irresistible impulse, but limited it to cases "where the defence is partial insanity" of the type known as paranoia". People v. Lowhorne² (1920) 292 Ill. 32, 126 N.E. 620, and others . More recently the paranoia limitation was removed and irresistible impulse was applied as a general test. People v. Krauser (1925) 315 Ill. 485, 146 N.E. 593, and People v. Saylor (1925) 319 Ill. 205, 149 N.E. 767. One case seemed to hold out a hint of possible

1. Dunn v. People (1884) 109 Ill. 635; Hormish v. People (1892) 142 Ill. 620, 32 N.E. 677; Meyer v. People (1895) 156 Ill. 126, 40 N.E. 490.

2. People v. Geary (1921) 297 Ill. 608, 131 N.E. 97; People v. Cochran (1924) 313 Ill. 508, 145 N.E. 207.

further change in future development by instructing in terms of the knowledge test alone. People v. Marquis (1931) 344 Ill. 261, 176 N.E. 314.

Alabama and Arkansas not only drew a distinction between irresistible impulse and moral insanity, but also required that the act should have been solely caused by the mental disease that gave rise to the impulse. Alabama established both criteria in its leading case, Parsons v. State (1886) 81 Ala. 577, 2 So. 854. The latter case stated that even if a man knew right from wrong, nonetheless he was not criminally responsible: "(1) If by reason "of mental disease, he had so far lost the "power to choose between right and wrong, and to "avoid doing the act in question, as that his free "agency was at the time destroyed. (2) And if, "at the same time, the alleged crime was so connect- "ed with such mental disease, in the relation of "cause and effect, as to have been the product of "it solely". Other cases followed this formulation

¹
closely . Arkansas attempted to resolve her
conflicting early decisions in Bell v. State (1915)
120 Ark. 530, 180 S.W. 186, which limited irresisti-
ble impulse, as a defence, to situations involving
"paranoia, which has progressed to the stage of
"persecution". More recent decisions removed this
limitation and made irresistible impulse a general
test. Diggs v. State (1916) 126 Ark. 455, 190 S.W.
448, and others . Bell v. State, supra, and others ,
distinguished moral or emotional insanity (both
adjectives were used) from irresistible impulse.
The same case, and others, some earlier and some
later ⁵ required the act to have been caused solely
by the mental disease.

1. Parrish v. State (1903) 139 Ala. 16, 36 So. 1012;
Porter v. State (1903) 140 Ala. 87, 37 So. 81; Mizel
v. State (1913) 184 Ala. 16, 63 So. 1000; Lambert v.
State (1922) 207 Ala. 190, 92 So. 265; Manning v.
State (1928) 217 Ala. 357, 116 So. 360.

2. Kelley v. State (1920) 146 Ark. 509, 226 S.W. 137;
Travis v. State (1923) 160 Ark. 215, 254 S.W. 464.

3. Sease v. State (1922) 155 Ark. 130, 244 S.W. 450.

4. Green v. State (1898) 64 Ark. 523, 43 S.W. 973.

5. Hankins v. State (1917) 133 Ark. 38, 201 S.W. 832;
Travis v. State (1923) 160 Ark. 215, 254 S.W. 464.

Colorado, Indiana and Kentucky also distinguished irresistible impulse from moral insanity, and required that the act be causally connected with the mental illness. Unlike Alabama and Arkansas, however, the former three states did not require the mental illness to be the sole cause. Colorado distinguished irresistible impulse from "moral obliquity, mental depravity, or passion arising from anger, hatred, revenge ...", and ascribed the impulse to mental illness. *Ryan v. People* (1915) 60 Colo. 425, 153 Pac. 756, and *Oldham v. People* (1916) 61 Colo. 413, 158 Pac. 148. Moral insanity was not mental illness, and hence was distinguishable from irresistible impulse which sprang from mental illness, ruled Indiana. *Goodwin v. State* (1884) 96 Ind. 550. Similarly, uncontrollable passion was not a defence, since it did not result from disease of the mind. *Plake v. State* (1889) 121 Ind. 433, 23 N.E. 273. From 1869 on, Indiana regarded irresistible impulse as a valid defence. *Stevens v. State* (1869) 31 Ind. 485, and *Bradley v. State* (1869) 31 Ind. 492. In Kentucky, moral insanity was at first regarded as the medical equivalent of irresistible impulse. More recently

the two concepts were distinguished. Moral insanity "coexisting with mental insanity" became invalid as a defence. *Banks v. Comm.* (1911) 145 Ky. 800, 141 S.W. 380. Irresistible impulse continued to be recognized, however. *Miller v. Comm.* (1930) 236 Ky. 448, 33 S.W. (2d) 590, and others ¹. But irresistible impulse arising from mental disease as required by the cases, was not to be confused with passion, anger or other emotional outburst not connected with mental disease. *Hutsell v. Comm.* (1928) 225 Ky. 492, 9 S.W. (2d) 132, and others ².

Michigan and Wyoming were silent with respect to moral insanity but contrasted irresistible impulse due to mental illness with uncontrollable passion without such illness. Thus in Michigan it was instructed that the impulse could not be merely

1. *Thomas v. Comm.* (1922) 196 Ky. 539, 245 S.W. 164; *Southers v. Comm.* (1925) 209 Ky. 70, 272 S.W. 26; *Lindsay v. Comm.* (1929) 230 Ky. 718, 20 S.W. (2d) 738.

2. *Howard v. Comm.* (1928) 224 Ky. 224, 5 S.W. (2d) 1056. See also, earlier cases to the same effect: *Fitzpatrick v. Comm.* (1883) 81 Ky. 357, and *McCarty v. Comm.* (1903) 114 Ky. 620, 71 S.W. 656.

"the result of his having allowed his passions to
"rise until they have become uncontrollable".
People v. Durfee (1886) 62 Mich. 487, 29 N.W. 109,
and People v. Bowen (1911) 165 Mich. 231, 130 N.W.
706. Even earlier than Durfee, Michigan had
recognized irresistible impulse. People v. Finley
(1878) 38 Mich. 482. Wyoming also recognized a
distinction between irresistible impulse (the
product of mental disease) which was accepted, and
uncontrollable passion (not due to such disease)
which was rejected. Flanders v. State (1916) 24
Wyo. 81, 156 Pac. 1121.

Three states, Connecticut, Vermont and
Virginia, approved irresistible impulse but did not
discuss moral insanity, nor set out a means of
distinguishing irresistible impulse from uncontroll-
able passion. Connecticut simply indicated that
the accused "must not be overcome by an irresistible
"impulse arising from disease". State v. Johnson
(1873) 40 Conn. 136, and State v. Saxon (1913) 87
Conn. 5, 86 Atl. 590. Vermont spoke of "mental and
"moral faculties disordered and deranged" so
that the "mind or will" of the accused was "involun-
"tarily so completely destroyed that he (could not)

"control his actions" then he was legally insane and not responsible. *Doherty v. State* (1901) 73 Vt. 380, 50 Atl. 1113, and *State v. Kelsie* (1919) 93 Vt. 450, 108 Atl. 391. Virginia required "a will" sufficient to restrain the impulse that may arise "from a diseased mind". *Dejarnette v. Comm.* (1881) 75 Va. 867, and *Thurman v. Comm.* (1908) 107 Va. 912, 60 S.E. 99.

The United States, both at the national level (federal cases), and at a local level (District of Columbia) may be regarded as having approved irresistible impulse. In the District of Columbia the rather doubtful early cases were resolved by *Smith v. U.S.* (1929) 59 App. D.C. 144, 36 Fed. (2d) 548. The *Smith* case held instructions erroneous because they had failed to include irresistible impulse as part of the charge. The appellate court ruled that not only must the knowledge test have been applied, but also consideration should have been given as to whether the accused was, or was not, "impelled to do the act by "an irresistible impulse". In federal cases at the national level, a slight doubt might still be

engendered. On the whole, however, it would seem that Davis v. U.S. (1895) 160 U.S. 469, 16 Sup. Ct. 353, settled the matter beyond serious question. It was there established that there could be no criminal responsibility of the "will, by which I mean the governing power of his mind, has been, "otherwise than voluntarily, so completely destroyed "that his actions are not subject to it but are "beyond his control". While this instruction might be given without error, nothing was said there or elsewhere of the effect of failure to so charge. However, similar instructions were approved in Hotema v. U.S. (1901) 186 U.S. 413, 22 Sup. Ct. 895,¹ and others .

Delaware and Montana also gave rise to some slight difficulties, but not of such character as to class these states as doubtful. Some early

1. Matheson v. U.S. (1912) 227 U.S. 540, 33 Sup. Ct. 355. See also, Davis v. U.S. (1897) 165 U.S. 373, 17 Sup. Ct. 360.

¹
cases in Delaware used only the knowledge test
without, it may be noted, denying (or otherwise
referring to) irresistible impulse. Later cases
clearly recognized irresistible impulse, however.
State v. Reidell (1888) 9 Hous. 470, 14 Atl. 550,
and others ². Montana seemed to cite New Hampshire
cases ³ with approval, but whether this meant
acceptance of the New Hampshire rule ⁴ was much more
questionable. In any event, in its own cases,
Montana accepted irresistible impulse fairly
explicitly. State v. Colbert (1920) 58 Mont. 584,
194 Pac. 145, and others ⁵.

1. State v. Danby (1864) Hous. Crim. Cas. 166;
State v. Pratt (1867) Hous. Crim. Cas. 249. But see
State v. Windsor (1851) 5 Harr. 512, which had
recognized irresistible impulse explicitly.

2. State v. Cole (1899) 18 Del. 344, 45 Atl. 391;
State v. Jack (1903) 20 Del. 470, 58 Atl. 833.

3. State v. Pike (1869) 49 N.H. 399; State v. Jones
(1871) 50 N.H. 369.

4. Discussed in Chapter IX.

5. State v. Peel (1899) 23 Mont. 358, 59 Pac. 169;
State v. McGowan (1907) 36 Mont. 422, 93 Pac. 552;
State v. Leahey (1911) 44 Mont. 354, 120 Pac. 234.

Louisiana, Massachusetts and New Mexico engendered more serious doubts, but still were sufficiently positive to be classed with the other states approving irresistible impulse. Louisiana put forth a fairly definite approval of irresistible impulse by speaking of "a disordered or distorted condition of the mind" rendering the accused "incapable of reasoning or of exercising the will". State v. Tapie (1931) 173 La. 780, 138 So. 665. Doubt arose from the fact that early cases had not spoken of irresistible impulse, and the Tapie case seemed to mention it in passing along with numerous variations in wording of the knowledge test. However, the distinction, drawn earlier than Tapie, between irresistible impulse and moral insanity with the latter explicitly not recognized, had raised an inference of recognition of the former, State v. Lyons (1904) 113 La. 959, 37 So. 890. This, coupled with Tapie, may be regarded as sufficient. In Massachusetts, the leading decision, Comm. v. Rogers (1844) 7 Metc. 500, raised numerous queries in sister states as to its meaning respecting irresistible impulse. Later Massachusetts cases interpreted the Rogers case as authority for irresistible impulse.

Thus it was charged that the accused was not responsible if he had "acted from an irresistible "and uncontrollable impulse". Comm v. Cooper (1914) 219 Mass. 1, 106 N.E. 545. Other instructions spoke of "no will, no conscience, or controlling mental "powers". Comm. v. Johnson (1905) 188 Mass. 382, 74 N.E. 939. If these cases had not rested so heavily upon the Rogers decision, the Massachusetts position would have been more certain. Even with the Rogers case, it may be fairly confidently asserted that Massachusetts properly belongs with the irresistible impulse states. New Mexico raised doubt largely because of its paucity of decisions. A late nineteenth century case ignored irresistible impulse and instructed in terms of the knowledge test. Faulkner v. Terr. (1892) 6 N. Mex. 464, 30 Pac. 905. An early twentieth century case, on the other hand, recognized irresistible impulse. Terr. v. Kennedy (1910) 15 N. Mex. 556, 110 Pac. 854. The more recent case, however, would seem to be the ruling decision.

Utah and Washington offered difficulties of sufficient magnitude so that it seemed preferable not to class them as irresistible impulse

states. Utah, it must be admitted, might perhaps have been equally categorized as within the impulse group. While early cases mentioned only the knowledge test, the case of State v. Green (1931) 78 Utah 580, 6 Pac. (2d) 177, stated, "Volitional "ability to choose the right and avoid the wrong is "..... fundamental in the required guilty intent ..". On the surface this appeared strong enough to warrant an inference of irresistible impulse as a defence. The difficulty was that the case also was concerned with specific intent, and the reduction in the grade of the offence when insanity negated the specific intent. There was, therefore, something substantially more than a bare possibility that the reference to "volitional ability" was to be taken in a limited context. Washington presented a far more questionable situation. The closest approach to irresistible impulse came in the observation that, "The legal "problem must resolve itself into the inquiry whether "there was mental capacity or moral freedom to do "or abstain from doing the particular act". State v. Schafer (1930) 156 Wash. 240, 286 Pac. 833. While "moral freedom" might well be sufficient approbation to ground irresistible impulse upon,

it equally might not have been so intended. Until Washington resolves the question more explicitly, it would seem safer not to characterize it as an irresistible impulse state.

America: Jurisdictions Denying Irresistible Impulse

Eleven states denied irresistible impulse as a defence in a fairly forthright manner. These were: California in *People v. Hoin* (1882) 62 Cal. 120, and *People v. Morisawa* (1919) 180 Cal. 148, 179 Pac. 888, among others¹. Florida in *Williams v. State* (1903) 45 Fla. 128, 34 So. 279, and *Collins v. State* (1924) 88 Fla. 578, 102 So. 880, among others. Kansas in *State v. Nixon* (1884) 32 Kans. 205, 4 Pac. 159, and *State v. White* (1922) 112 Kans. 83, 209 Pac. 660, among others. Maine in *State v. Knight* (1901) 95 Me. 467, 50 Atl. 276. Maryland in *Spencer v. State* (1888) 69 Md. 28, 13 Atl. 809.

1. *People v. Ward* (1894) 105 Cal. 335, 38 Pac. 945; *People v. Barthleman* (1898) 120 Cal. 7, 52 Pac. 112; *People v. Harris* (1914) 169 Cal. 53, 145 Pac. 520.

1

Minnesota by statute¹, and in State v. Scott (1889) 41 Minn. 365, 43 N.W. 62. New Jersey in Graves v. State (1883) 45 N.J.L. 347, and State v. Noel (1926) 102 N.J.L. 659, 133 Atl. 274, among others. New York² in Flanagan v. People (1873) 52 N.Y. 467, and others. North Carolina in State v. Brandon (1862) 53 N.C. 463, and State v. Terry (1917) 173 N.C. 761, 92 S.E. 154, among others. South Carolina in State v. Levelle (1891) 34 S.C. 120, 13 S.E. 319, and State v. Lloyd (1909) 85 S.C. 73, 67 S.E. 9, among others. West Virginia in State v. Harrison (1892) 36 W. Va. 729, 15 S.E. 982, and State v. Cook (1911) 69 W. Va. 717, 72 S.E. 1025.

America: Inconsistent Denials Of
Irresistible Impulse

Twelve states denied irresistible impulse but did so with varying types and degrees of inconsistency. These were: Georgia, Iowa, Mississippi, Missouri, Nebraska, Nevada, Oklahoma, Oregon,

1. Gen.Stat. (1927) Sec. 9915.

2. People v. Coleman (1881) 1 N.Y. Crim. 1; Walker v. People (1882) 88 N.Y. 81; People v. Carpenter (1886) 102 N.Y. 238, 6 N.E. 584.

Pennsylvania, Tennessee, Texas, and Wisconsin.

Georgia linked irresistible impulse to delusion, and allowed the defence to be made only when there was evidence of delusion brought forth. ¹ Anderson v. State (1871) 42 Ga. 9, and others . This limitation was sufficiently extensive so that Georgia had to be classed as a state denying irresistible impulse as a general defence. Nonetheless, in one case, the charge set out irresistible impulse in general terms, without the delusion limitation. Clark v. State (1928) 167 Ga. 341, 145 S.E. 647.

Iowa, in its early decisions, had seemingly recognized irresistible impulse. State v. Felter (1868) 25 Ia. 67. But in State v. Buck (1928) 205 Ia. 1028, 219 N.W. 17, the Court apparently denied irresistible impulse by treating the earlier statements as dicta, and paying little heed to them. With due respect to the Court, this must be regarded

1. Fogarty v. State (1888) 80 Ga. 450, 5 S.E. 782; Glover v. State (1907) 129 Ga. 717, 59 S.E. 816.

as fundamental inconsistency, since no amount of characterization could reduce what were holdings to mere dicta. The Court did protect itself by saying these were "largely dicta", but it may be submitted that the adverb could equally, or more properly, modify "holdings".

Mississippi limited irresistible impulse to the vanishing point. The doctrine was considered a valid defence only in those circumstances where it concomitantly destroyed knowledge or understanding of right and wrong. *Smith v. State* (1909) 95 Miss. 786, 49 So. 945. This not only removed all practical utility from the test, but it also constituted a major inconsistency. Irresistible impulse, wherever it was in effect, was used as a supplement to the knowledge test. The Mississippi view, by incorporating a concomitant knowledge test with it, deprived it of use and meaning.

Missouri, in a long line of decisions beginning in 1881, explicitly rejected irresistible impulse. *State v. Kotovsky* (1881) 74 Mo. 247, and

¹
others . But, at various times, trial courts instructed very much in terms of the apparently rejected doctrine. As early as 1848, Baldwin v. State, 12 Mo. 142, charged that there was no criminal responsibility if the accused was "irresistibly impelled ... by insane impulse (so) that "he had not the ability to resist that impulse...". And as recently as 1920, State v. Miller, 225 S.W. 913, approved instructions that exculpated if it were found that the accused "was impelled by an "insane impulse(so) that he could not refrain "from doing the act". Other cases also charged in language tantamount to irresistible impulse ² .

Nebraska followed a pattern somewhat similar to that of Missouri. The irresistible impulse test was categorically rejected. The Court stated in so many words that "The doctrine of uncontrollable "impulse is not recognized in the jurisprudence "of this state". Schwartz v. State (1902) 65 Neb.

1. State v. Pagels (1887) 92 Mo. 300, 4 S.W. 931; State v. Soper (1899) 148 Mo. 217, 49 S.W. 1007; State v. Weagley (1920) 286 Mo. 677, 228 S.W. 817; among others.

2. State v. Lowe (1887) 93 Mo. 547, 5 S.W. 889.

196, 91 N.W. 190, and Bothwell v. State (1904) 71 Neb. 747, 99 N.W. 669. But instructions were also approved that spoke of exculpation because of "an uncontrollable impulse to do the act". Wright v. People (1876) 4 Neb. 407, and others¹. In the Schwartz case the Court apparently regarded moral insanity and irresistible impulse as equivalents². In the Wright case, irresistible impulse seemed to be linked with the knowledge test; if mental unsoundness were of such degree as to indicate irresistible impulse there was no responsibility, but if not of such degree as to destroy knowledge of right and wrong, there was responsibility³. Whether these refinements aided the Nebraska judiciary in reconciling fundamentally inconsistent views must be respectfully doubted. To the outside observer, they only made an obscure rationale more obscure.

1. Burgo v. State (1889) 26 Neb. 639, 42 N.W. 701; Torske v. State (1932) 123 Neb. 161, 242 N.W. 408.

2. The Court spoke of "the doctrine of moral insanity or uncontrollable impulse".

3. The Court stated: "The degree of mental unsoundness, in order to exempt ... must be such as to create an uncontrollable impulse ... But if it be found to be insufficient to deprive the accused of the ability to distinguish right from wrong, he should be held responsible...".

Nevada used only the knowledge test in most cases. *State v. Lewis* (1889) 20 Nev. 333, 22 Pac. 241, and *State v. Hartley* (1895) 22 Nev. 342, 40 Pac. 372. But in a more recent case the Court did not disapprove a charge that added as a test for non-responsibility: "not sufficient will power "to govern his action by reason of some insane "impulse which he could not resist or control". *State v. Clancy* (1915) 38 Nev. 181, 147 Pac. 449. It must be submitted that this did not amount to adoption of a new doctrine. New law is not introduced so casually, almost negligently, and by such extreme indirection. The Nevada cases must, therefore, be regarded as inconsistent.

Oklahoma had the knowledge test establish-
ed by statute¹; the statute made no mention of irresistible impulse. Furthermore, the doctrine of irresistible impulse was expressly rejected by judicial opinion. *Snodgrass v. State* (1918) 15 Okla.

1. Okla. Stat. (1931) Sec. 1797.

Crim. 117, 175 Pac. 129, and others¹. Nonetheless, it was also held that lack of "the will and mental "power to refrain from committing (the) act" would render the accused not responsible. *Adair v. State* (1911) 6 Okla. Crim. 284, 294, 118 Pac. 416. The inconsistency apparently proved embarrassing to the Oklahoma Courts, for as Professor Weihofen noted, "The doctrine of this case seems to be deliberately² "misquoted in later cases" .

Oregon expressly rejected irresistible impulse in its case law, *State v. Grayson* (1928) 126 Ore. 560, 270 Pac. 404, and by implication in its statute³. But a charge that allowed consideration of "power to do or refrain from doing the act" with

1. *Sloan v. State* (1923) 25 Okla. Crim. 15, 218 Pac. 717; *Tittle v. State* (1929) 44 Okla. Crim. 287, 280 Pac. 865.

2. *Insanity As A Defense In Criminal Law*, p. 136.

3. Code (1930) Sec. 14 et. seq. A "morbid propensity to commit prohibited acts" did not excuse, and according to the statute, if there was knowledge that the act was wrong, that was a conclusive presumption against irresistible impulse.

respect to responsibility was not found erroneous.
State v. Branton (1899) 33 Ore. 533, 56 Pac. 267.

Pennsylvania, in some of its earlier cases, spoke of the "power of self control" as a necessary ingredient in criminal responsibility in addition to knowledge of right and wrong. Comm. v. De Marzo (1909) 223 Pa. 573, 72 Atl. 893. But in Comm. v. Schroeder (1931) 302 Pa. 1, 152 Atl. 835, it was said that "the defence of irresistible impulse is one which our law does not recognize". And again, as recently as May 22, 1950, the Pennsylvania Supreme Court observed that "The learned trial judge properly excluded all evidence of 'irresistible impulse'. Such a defence on the trial of an indictment for murder is one which the law of Pennsylvania does not recognize". Comm. v. Daverse (1950) 364 Pa. 623, 625. It would seem that the recent repeated Pennsylvania denials, while ignoring previous inconsistencies, might be regarded as having overruled the few instances of prior tacit approval.

Tennessee underwent a similar process of development. Some earlier cases had indicated, not

strongly however, that irresistible impulse might constitute a valid defence under certain circumstances. *Henslie v. State* (1871) 50 Tenn. 202,¹ and others . But later cases rejected irresistible impulse in most explicit language: "The idea that "an irresistible impulse is an excuse for the "commission of crime, where the party is capable "of knowing right from wrong, has no foundation "in our jurisprudence". *Wilcox v. State* (1894) 94 Tenn. 106, 28 S.W. 312, and *Davis v. State* (1930) 161 Tenn. 23, 28 S.W. (2d) 993.

Texas, to some extent, followed the same pattern. Early cases spoke of "will" and "moral "freedom of action", implying approval of irresistible impulse. *King v. State* (1880) 9 Tex. App. 515,² and others . Later cases strongly rejected the doctrine. *Cannon v. State* (1900) 41 Tex. Crim. 467,

1. *Stuart v. State* (1873) 60 Tenn. 178; *Hunt v. State* (1877) 2 Shannon 395.

2. *Warren v. State* (1880) 9 Tex. App. 619.

56 S.W. 351, and others ¹. But sporadic instructions in terms of irresistible impulse still were visible. On occasion, such instructions even obtained tacit appellate approval in that they were not singled out as error upon review. *Witty v. State* (1914) 75 Tex. Crim 440, 171 S.W. 229, and others ². On other occasions, even the appellate tribunal seemed to talk in terms of irresistible impulse. *Kirby v. State* (1912) 68 Tex. Crim. 63, 150 S.W. 455, and *Zimmerman v. State* (1919) 85 Tex. Crim. 630, 215 S.W. 101.

Wisconsin also had early cases where irresistible impulse was accepted. *Bennett v. State* (1883) 57 Wis. 69, 14 N.W. 912, and others ³. But it

1. *Thomas v. State* (1909) 55 Tex. Crim. 293, 116 S.W. 600; *Kirby v. State* (1912) 68 Tex. Crim. 63, 150 S.W. 455; *Craven v. State* (1923) 93 Tex. Crim. 328, 247 S.W. 515; *Langhorn v. State* (1926) 105 Tex. Crim. 470, 289 S.W. 57; among others.

2. *Calloway v. State* (1922) 92 Tex. Crim. 506, 244 S.W. 549; *Newman v. State* (1924) 99 Tex. Crim. 363, 269 S.W. 440.

3. *Butler v. State* (1899) 102 Wis. 364, 78 N.W. 590; *Lowe v. State* (1903) 118 Wis. 641, 96 N.W. 417.

was later ruled that "the law does not recognize "affirm of insanity in which the capacity of "distinguishing right from wrong exists without "the power of choosing between them". *Oborn v. State* (1910) 143 Wis. 249, 126 N.W. 737. However, the earlier cases were not expressly overruled; reconciliation was attempted on the ground that the doctrine had not been squarely in issue previously. Again it must be noted with all respect that such a view rather stretched proper powers of interpretation.

America: Doctrine of Diminished Grade of Offence Rejected

Six American jurisdictions rejected the idea that mental abnormality, not sufficient to result in lack of criminal responsibility, might nonetheless so affect intent as to reduce, or diminish, the grade of the offence either from first degree murder to second degree, or from murder to manslaughter. These were: Arkansas, California, Massachusetts, Missouri, Washington and the District of Columbia. Of these jurisdictions, five were states who had considered the question of reduction of first degree murder to second degree:

Arkansas held it error to instruct that mental abnormality might prevent or negative the required element of premeditation. *Bell v. State* (1915) 120 Ark. 530, 180 S.W. 186. In California, the Court ruled that "If responsible at all ... he is "responsible in the same degree as a sane man, and "if... not ... he is entitled to an acquittal in "both degrees". *People v. Troche* (1928) 206 Cal. 35, 273 Pac. 767. In Massachusetts, *Comm. v. Cooper* (1914) 219 Mass. 1, 106 N.E. 545, took the same view. Missouri did not permit evidence of mental abnormality, insufficient to acquit, to reduce the degree of murder by its affect on the necessary element of deliberation. *State v. Holloway* (1900) 150 Mo. 222, 56 S.W. 734, and *State v. Paulsgrove* (1907) 203 Mo. 193, 101 S.W. 27. In Washington it was ruled that mental abnormality short of non-responsibility could not render the accused incapable of premeditation. *State v. Schneider* (1930) 158 Wash. 504, 291 Pac. 1093. The sixth jurisdiction, the District of Columbia, considered the possibility of reduction of murder to manslaughter, as a result of mental abnormality short of non-responsibility, and rejected the doctrine. *U.S. v. Lee* (1886) 15 D.C. (4 Mackey) 489.

Three states, Indiana, Nebraska and Pennsylvania, rejected the doctrine of diminished grade of offence, but did so in an inconsistent manner. In Indiana, while mental abnormality, short of acquittal, was said not to affect reduction in the grade of offence, nonetheless, "independently "of any question of insanity" the mental and physical condition of the accused at the time of the alleged act constituted competent evidence for the jury to consider, in order to judge the "character" of the "transaction". Sage v. State (1883) 91 Ind. 141. Mental defect or weakness of mind was considered relevant as to intent. Robinson v. State (1887) 113 Ind. 510, 16 N.E. 184. In Nebraska, while diminished grade of offence was rejected in principle, the highest court exercised its statutory power of mitigating excessive sentences by applying mitigation to some instances of mental defect or mental illness. Hamblin v. State (1908) 81 Neb. 148, 115 N.W. 850,¹ and others . In Pennsylvania a number of cases

1. Muzik v. State (1916) 99 Neb. 496, 156 N.W. 1056;
Cryderman v. State (1917) 101 Neb. 85, 161 N.W. 1045.

expressly rejected reduction in the grade of offence based upon mental abnormality short of non-responsibility. Comm. v. Hollinger (1899) 190 Pa. 155, 42 Atl. 548, and others¹. But instructions that insanity or intoxication might destroy self-control, and might thus negative premeditation, were tacitly approved (or at least not rejected) upon appellate review. Comm. v. Hillman (1899) 189 Pa. 548, 42 Atl. 196, and others².

America: Doctrine of Diminished Grade of Offence Accepted

Ten states clearly accepted the doctrine that mental abnormality, short of non-responsibility, might yet affect intent or deliberation or premeditation to such degree as to diminish the grade of offence from first degree murder to second, or from murder to manslaughter. These were: Connecticut, Illinois, New Jersey, New York, Ohio, Rhode Island,

1. Comm. v. Wireback (1899) 190 Pa. 138, 42 Atl. 542; Comm. v. Heidler (1899) 191 Pa. 375, 43 Atl. 211.

2. Nevling v. Comm. (1881) 98 Pa. 322; Comm. v. Werling (1894) 164 Pa. 559, 30 Atl. 406.

Tennessee, Utah, Virginia and Wisconsin.

New Jersey affirmed the doctrine in¹ various minority opinions in its early cases, but finally accorded it majority recognition in *State v. Close* (1929) 106 N.J.L. 321, 148 Atl. 764. Rhode Island held that abnormality short of lack of responsibility was relevant with respect to "fixity" and duration of the conscious intent or premeditation! *State v. Fenik* (1923) 45 R.I. 309, 121 Atl. 218. Utah ruled similarly with respect to particular or specific intent. *State v. Anselmo* (1915) 46 Utah 137, 148 Pac. 1071, and *State v. Green* (1931) 78 Utah 580, 6 Pac. (2d) 177. Wisconsin ruled to the same effect with respect to malice. *Hempton v. State* (1901) 111 Wis. 127, 86 N.W. 596, and *Oborn v. State* (1910) 143 Wis. 249, 126 N.W. 737. Tennessee also ruled with respect to malice, but spoke of insane delusion as negating that particular element in the crime of murder. *Davis v. State* (1930) 161

1. *State v. Maioni* (1909) 78 N.J.L. 339, 74 Atl. 526; *State v. Schilling* (1920) 95 N.J.L. 145, 112 Atl. 400; among others.

Tenn. 23, 28 S.W. (2d) 993. New York had a dictum with respect to "deliberate and premeditated design "to kill", but was concerned only with "feebleness "of mind or will". People v. Moran (1928) 249 N.Y. 179, 163 N.E. 553.

Connecticut applied the doctrine in instructions dealing with absence of premeditation and deliberation sufficient to reduce first degree murder to second degree murder. Anderson v. State (1876) 43 Conn. 514, and State v. Saxon (1913) 87 Conn. 5, 86 Atl. 590. Ohio followed the same pattern in reducing first to second degree murder in cases of "partial insanity, or an intellect so weak" as to negative "power to deliberate and meditate". Cottell v. State (1896) 12 O. Cir. Ct. 467. Virginia took a similar view, by dictum, in cases of "partial "aberration or enfeeblement of intellect which "renders him incapable of the sedate, deliberate "and specific intent necessary to constitute murder "in the first degree". Dejarnette v. Comm. (1881) 75 Va. 867. But a predisposition toward mental abnormality was held too vague to be material with respect to malice or premeditation. Dejarnette v. Comm., supra.

Illinois permitted reduction of murder to manslaughter where the mental abnormality was not sufficient to meet the tests of exculpation. *Fisher v. People* (1860) 23 Ill. 283.

Two states, Kentucky and Texas, approved the doctrine of diminished grade of offence, but did so with inconsistencies. Kentucky, in one case, permitted all attendant factors, including mental state, to be adduced with respect to degree of guilt. *Rogers v. Comm.* (1894) 96 Ky. 24, 27 S.W. 813. But in another Kentucky case the Court refused to include "proof of insanity other than drunkenness" in instructions respecting reduction of murder to manslaughter. *Perciful v. Comm.* (1925) 212 Ky. 673, 279 S.W. 1062. Texas permitted evidence of "state of mind" for "establishing ... intent and fixing "the grade of the offence ...". *Hogue v. State* (1912) 65 Tex. Crim. 539, 146 S.W. 905. But the same case also indicated it rejected "the doctrine "that a person with a mind below normal should be "punished for a lower grade of offence ...". Even if the Court meant "state of mind" to refer to mental illness, while "mind below normal" referred

to mental defect (a proposition that the Court itself never made clear) there would still be an inconsistency in principle. Texas did clearly reject the idea that mental abnormality, short of non-responsibility, might be considered with respect to provocation; the objective "reasonable man" standard was affirmed in a number of instances. *Crews v. State* (1895) 34 Tex. Crim. 532, 31 S.W. 373, and others ¹.

Scotland: The Doctrine Of Diminished Responsibility

MacDonald defined culpable homicide in Scotland as "death ... caused by improper conduct ...² "where the guilt is less than murder" . Of the three types of culpable homicide set out, the first was "killing implying murder but for diminished³ responsibility in the accused" . This was also

1. *Hurst v. State* (1899) 40 Tex. Crim. 378, 46 S.W. 635, 50 S.W. 719; *Witty v. State* (1914) 75 Tex. Crim. 440, 171 S.W. 229; *Zimmerman v. State* (1919) 85 Tex. Crim. 630, 215 S.W. 101.

2. *Criminal Law of Scotland* (5th ed. 1948) p. 96.

3. *Loc. cit.*

subdivided into criminal responsibility (1) diminished¹ by reason of external circumstances, or (2) by "defects in his own mental make-up"². With this analysis as a frame of reference, the doctrine of diminished responsibility may be considered.

It has already been submitted that the "rule of proportions" should be regarded as a precursor of diminished responsibility. The latter doctrine, however, dates its immediate, modern³ genesis⁴ to the case of Dingwall. Lord Deas followed his instructions in Dingwall, supra, in⁵ the case of McLean. Thereafter, the doctrine was

1. Such as acting under reasonable provocation when "presence of mind has left"; or, acting in "heat of passionate indignation" without time to cool down upon discovering or learning of a spouse's adultery. Ibid, pp. 96, 97.

2. Loc. cit.

3. Lord Justice General Normand recorded the modern history of the doctrine in the case of Kirkwood, 1939 J.C. 36; he noted that neither Hume nor Alison recognized it, but found traces of it in Bell's Notes to Hume. The first case in which such a charge was given was Dingwall.

4. (1867) 5 Irvine 466.

5. (1876) 3 Couper 335; noted by Lord Normand as part of his historical statement in Kirkwood, supra.

again followed in the cases of Smith¹ and Graham². But the instructions in these cases had by no means yet placed the doctrine beyond doubt. Thus seven years after Graham, supra, the case of Higgins³ indicated dissatisfaction that the doctrine had been introduced⁴. Lord Johnston there said he did not understand the distinction drawn between mental abnormality resulting in non-responsibility and that resulting in diminished responsibility⁵.

However, ten years later Lord Justice Clerk Alness, in the case of Savage⁶, took pains to

1. (1893) 1 Adam 34.

2. (1906) 5 Adam 212.

3. (1913) 7 Adam 229.

4. The Court observed: "I know that ... Lord Deas, - initiated the suggestion that the condition of a man's mind, while not amounting to insanity, and therefore excusing him from the deed, might be treated as an extenuating circumstance, therefore reducing the crime to something below what in its normal condition it would be. I fail to follow his Lordship". Transcript, p. 195.

5. The Court said: "I do not know what short of an insane mind, reaches limited responsibility for a man's actions...". Transcript, p. 195.

6. 1923 J.C. 49.

reaffirm the doctrine of diminished responsibility. He posed this question to the jury: "whether the "state of mind of the prisoner at the time, while "not amounting to insanity was such as to render "appropriate, and indeed proper and necessary, a "verdict of culpable homicide rather than of murder". Lord Alness also gave the jury the characteristic indicia of the mental state necessary for diminished responsibility: "that there must be aberration or "weakness of mind; that there must be some form of "mental unsoundness; that there must be a state of "mind which is bordering on, though not amounting "to, insanity; that there must be a mind so affected "that responsibility is diminished from full "responsibility to partial responsibility - in other "words, the prisoner in question must be only "partially accountable for his actions. And I think " ... there is implied - as Lord Stormouth-Darling¹ "said¹ ... - that there must be some form of "mental disease".

1. In the case of Aitken (1902) 4 Adam 88.

But another full decade passed before the
case of Muir ¹ brought acceptance of the doctrine by
the Court of Appeal. This finally met the desire
expressed earlier by Lord Johnston in Higgins, supra,
that the doctrine should "have the consideration of
"a much larger Court than merely a single Judge
"sitting in the Justiciary". Since Muir, of course,
the Court of Appeal again indicated approval of the
doctrine in Kirkwood ² and Carraher ³. In Muir, it
was also established that failure "to direct as to
"the two alternatives open on the charge and to
"the form of the verdict" ⁴, would result in appellate
reduction of the verdict from murder to culpable
homicide.

In the case of Kirkwood, supra, after
evidence, including medical evidence, had been led,

1. 1933 J.C. 46.

2. 1939 J.C. 36.

3. 1946 J.C. 108.

4. Min. of Evid., R.C.C.P., 5 April 1950, p. 444,
par. 14. (Memorandum of the Faculty of Advocates).

a plea of culpable homicide was accepted by the Crown. While the Lord Advocate might have charged the accused with either murder or culpable homicide on the basis of medical reports to the same effect as the trial testimony, he chose a murder indictment, leaving it to the defence to establish the lesser crime. This seemed to be the general Scottish practice. Lord Normand also indicated in Kirkwood that the doctrine of diminished responsibility turned largely on the special facts of each case, since it was a variation of the basic dichotomy,¹ sane or insane .

2

The case of Braithwaite yielded a simple and effective statement of diminished responsibility. Lord Cooper instructed that "even if a man charged

1. He spoke of the "basic doctrine of our criminal law that a man if sane, is responsible for his acts, and if not sane, is not responsible". "Impaired responsibility", he said, was "a modern variation of that basic doctrine, justified in each case by medical testimony directed to the special facts of the case".

2. 1945 J.C. 55.

"with murder is not insane, still our law does
"recognize ... that, if he was suffering from some
"infirmity or aberration of mind or impairment of
"intellect to such an extent as not to be fully
"accountable for his actions, the result is to
"reduce the quality of his offence in a case like
"this from murder to culpable homicide". The Lord
Justice General (then Lord Justice Clerk) went on
to review other statements of the doctrine,
particularly that of Lord Alness in Savage. It
would appear, however, that Lord Cooper's own
statement was, as Professor Montgomery said, "as
"good a definition of diminished responsibility as
"there is to be found"¹. The Permanent Secretary
of the Scottish Home Department agreed that "Lord
"Cooper's own definition (was) clearer than anything
"he repeat(ed) in amplification of it"². The Crown
Agent was asked to "select a decision which
"gives the clearest idea of this doctrine" of

1. Min. of Evid., R.C.C.P., 5 August 1949, p. 77,
par. 593.

2. Ibid, par. 594.

diminished responsibility. He replied that "the¹
"best conception is Braithwaite's case" .

²
The case of Carraher seemed to raise two
troublesome questions: (1) were cases of psycho-
pathic personality ruled out of the doctrine of
diminished responsibility, and (2) did the case
indicate the beginning of a tendency to contract
the doctrine?.

The Crown Agent seemed to answer the first
question affirmatively in response to a question
intimating that Carraher ruled "definitely that a
"psychopath was not a suitable case for the plea³
"of diminished responsibility". However, the
problem in Carraher was what Professor Montgomery
has described as "drink cum psychopathic personality".
Furthermore, the Court spoke not in general terms
about psychopathic personalities, but rather about

1. Min. of Evid., R.C.C.P., 3 Nov. 1949, p. 179,
par. 2036.

2. 1946 J.C. 108.

3. Min. of Evid., op. cit., p. 179, par. 2031.

the evidence of the particular case, where the description of abnormality seemed wide enough to fit any criminal rather than indicative of disease. Hence, unless the Court were to subordinate legal standards to medical labels, the particular application contended for had to be rejected. The interpretation adopted by the representatives of the Faculty of Advocates would seem to be the correct one. They stated that "If it was shown at a later stage that Carraher, who had a psychopathic personality, was really suffering from an impairment of his intellect by disease, then he would come within the diminished responsibility rule. What the Judges protested against in the Carraher case was the acceptance of medical evidence which¹ merely applied epithets to the man" .

The second question posed by Carraher should also, it is submitted, be answered negatively. The case did not contract the doctrine of diminished responsibility, but rather refused to permit it to

1. Min. of Evid., R.C.C.P., 5 April 1950, p. 450, par. 5628.

be expanded beyond its already ample bounds. The Crown Agent expressed the same view, saying that "Lord Normand suggested that the doctrine should "not be stretched any further. I do not think by "that it was suggested that it had been stretched "too far"¹. The Faculty of Advocates' witness answered a question to the effect that Carraher was a judicial indication that "diminished responsibility "was getting rather out of hand" by stating, "No, I "think rather that some people had tried to apply "it to circumstances where it was inapplicable, but "it was not out of control of the Court".

Conclusions And Recommendations

The doctrine of diminished responsibility has been subjected to a certain amount of criticism, as have the other legal alternatives, but with this significant exception - the criticism of diminished responsibility came from those unfamiliar with the system rather than those who used it in practice.

1. Min. of Evid., op. cit., p. 178, par. 2002.

It has been suggested that a defect of the doctrine could be found in the fact that it simply resulted in imprisonment for the offender, with no assurance of public protection once his term of punishment had been served¹. This was actually a criticism of the machinery of punishment, rather than the doctrine qua concept. Nonetheless, it should be considered. One answer to such criticism was provided by Lord Cooper who pointed out that "in such cases there was machinery available by which he could be detained under a different statute if he were a dangerous lunatic"². Whether he committed a crime or not, ordinary certification procedure should prove sufficient in almost any jurisdiction today to remove the public menace.

1. Thus the Chairman of the Royal Commission On Capital Punishment observed in one of his questions that .. "the man who was convicted of culpable homicide on the plea of diminished responsibility would be released again in 8 or 10 years and he might be a man whom it would be better to keep permanently in an asylum?" Min. of Evid., R.C.C.P., 3 Nov. 1949, p. 178, par. 2010.

2. Min. of Evid., R.C.C.P., 4 April 1950, p. 437, par. 5471.

Still another answer could be found by use of the indeterminate sentence. No matter what legal alternative were adopted, if it resulted in preserving the life of a mentally abnormal person who had killed, it should also subject him to medical supervision with respect to safety of release. The indeterminate sentence would be one method to achieve that end.

It has also been suggested that the doctrine of diminished responsibility offered an invitation to juries to take the easy way out of a perplexing and frequently disagreeable situation by bringing in the lesser verdict. In short, it was contended that both standard of non-responsibility and the standard of responsibility would disappear if juries were given the opportunity to choose something in between, such as diminished responsibility. Sir David Henderson, speaking from his experience as an expert witness, concluded that the doctrine did not tempt juries to be too lenient.¹

1. Min. of Evid., R.C.C.P., 6 April 1950, p. 472, par. 6499.

Lord Cooper came to the same conclusion, adding that he "had seen three juries reject it under "circumstances where they could confidently have "accepted it", and noting that he did "not see any "indication that it is being abused or improperly "used, much depending of course on how the jury¹ "are directed" .

Those who have had the most opportunity to not only observe the doctrine, but to observe it in operation at first hand, expressed themselves as satisfied that it functioned justly and well. The judiciary indicated their approval by continuing to uphold the doctrine although they have the common law power to alter it, if alteration were regarded as necessary. The Faculty of Advocates, in their Memorandum to the Royal Commission, came to the considered conclusion that, "The present application "of the doctrine of diminished responsibility "appears to be so far satisfactory that no recom-² "mendation is made for altering it" . The Crown

1. Min. of Evid., R.C.C.P., 4 April 1950, p. 437, par. 5467.

2. Min. of Evid., R.C.C.P., 5 April 1950, p. 446, par. 33.

Agent, from the special point of view of the prosecution, not only agreed that the doctrine was "a good and fair element in a trial"¹, but when asked whether it might not also be extended to England replied, "I think we have possibly "advanced in so far as medical science and the "medical viewpoint are concerned"². The psychiatric attitude was summed up by Sir David Henderson who was asked whether he was "satisfied that the "doctrine of diminished responsibility works in "Scotland at the present time with substantial "justice"; he replied, "I have always thought that "it did. I have always thought it covered the "group of cases that merited rather special "attention and consideration"³.

In his approval of the doctrine, Sir David Henderson, *supra*, indicated one of the reasons why diminished responsibility might be recommended for jurisdictions other than Scotland. That reason was that the problem cases were well covered by the

1. Min. of Evid., R.C.C.P., 3 Nov. 1949, p. 180, par. 2049.

2. Ibid, par. 2050.

3. Min. of Evid., R.C.C.P., 6 April 1950, p. 472, par. 6498.

doctrine. To some extent, of course, merely taking a broader view of the standard of non-responsibility accomplished the same thing, as the preceding chapter attempted to show. But some supplementary doctrine was still needed even with a standard such as the New Hampshire rule. For even if all the undoubted cases where the mental defect was emotional rather than intellectual in nature, were included under the exculpatory standard there would still be an area of difficulty and doubt.

That area results from the fact that there are variations in degree of mental infirmity. Consequently, any exculpatory standard with its division into two categories, sane and insane, must overlook those cases neither sane nor insane, partly bad and partly mad. Only a doctrine of diminished responsibility, or something analagous, could remedy that condition of the problem area. This aspect, more than its undoubted greater degree of humaneness, recommended the doctrine. Thus when Lord Cooper was asked whether the doctrine had "been introduced "in an attempt to make the administration of capital "law less stringent"; or because it was "felt that

"human personality is so complex that one has to
"recognize degrees in mental conditions"; or both;
he stressed the second as "the best explanation"¹.

Finally, the doctrine offers flexibility not only in present application of medical knowledge to law, but also with respect to such future changes in medical theory as are the inevitable price of scientific progress. The law cannot change with each article that appears in the psychiatric journals, nor even with each shift in the consensus of opinion from generation to generation in psychiatry. Consequently, the law must have a doctrine whose somewhat paradoxical quality is that it permits change while itself remaining unchanged (or at least subject only to the gradual change of evolutionary common law development).

For the various reasons indicated, the doctrine of diminished responsibility may be recommended not only for retention in Scotland, but equally for adoption elsewhere.

1. Min. of Evid., R.C.C.P., 4 April 1950, p. 440, par. 5511.

To some extent those American states that permitted a diminished grade of offence, due to mental abnormality short of non-responsibility, achieved a doctrine analagous to that of Scotland. Yet only a handful of states have taken the step and some flatly rejected it.

The reason was not difficult to find. Reduction in grade of offence usually meant reducing first degree murder to second degree, and less frequently meant reducing murder to manslaughter. In either event, it was achieved by relating the abnormal mental condition to malice, or premeditation, or deliberation, or similar state of mind. The abnormality while insufficient to exculpate was considered sufficient to negative the higher criminal state of mind. Therein lay the difficulty. Instead of being faced with the difficult task of relating abnormal mental condition to an exculpatory standard, the jury was asked to that in addition to something else even more difficult. This second difficulty was to relate an abnormal mental condition, short of the above, to an even finer and more delicate legal inquiry, namely - malice or premeditation.

With diminished responsibility, on the other hand, the difficulties of applying an exculpatory standard were eased instead of increased. This was due to the fact that the doctrine recognized that there were degrees of mental disorder. The practical task for the jury was to decide whether this was the exculpatory mental condition (in which case the defence of insanity had been established) or something approaching close to it (in which case diminished responsibility was made out).

Briefly, reduction in grade of offence¹ functioned by establishing a third category requiring an even more precise insight (malice, deliberation, etc.) into mental condition than the exculpatory category. Hence it functioned poorly. Diminished responsibility, on the contrary, functioned by establishing a third category requiring less precise insight (not fully accountable, bordering on, partial) than the exculpatory category. Hence it functioned well. Under the circumstances, the

1. That is, one in addition to the primary categories, responsible and not responsible.

American experience with reduction in grade of offence cannot be recommended over the Scottish doctrine of diminished responsibility. While the American doctrine of reduction has a high theoretical value, its practical value must be considered extremely low, unless exercised by an unusually perspicacious and gifted jury. For the average jury, it is submitted, it cannot be recommended.

The legal alternative that has received more attention than any other has been irresistible impulse. It was the first important means suggested to fill the void left by restriction of non-responsibility to the cognitive defects discoverable by an unaided knowledge test. Over a period of years, therefore, accumulated a respectable body of followers, particularly in the United States.

The most frequent argument advanced against irresistible impulse has been that there was no way to distinguish an irresistible impulse from an unresisted one. That argument, however, was not as unanswerable as it sounded. In the first place, so long as the burden of proof of insanity was on the accused, there could be no objection in

letting him shoulder even so heavy a task as showing the impulse irresistible rather than unresisted, if he so willed. The difficulties of proof were no reason to deny the accused all opportunity of proof. Particularly was this so when the risk of non-persuasion was upon him.

The second answer to the question of distinguishing irresistible impulse from unresisted impulse could be found in the practice of those American states that had adopted the doctrine. They instructed their juries that the irresistible impulse was one due to mental disease, while the unresisted one was due to anger, passion, jealousy or other such emotion, without disease. Whatever flaws such a distinction might have, juries seemed to be able to understand it when put in those terms.

All this would have meant a strong recommendation of irresistible impulse if this were the nineteenth century. For during that period of its growth (largely in America) medical science could still fit the doctrine into its theory. Perhaps it still can, since Medical Associations

1

still go on recommending its adoption . But there is still a strong psychiatric counter-current of opinion in the twentieth century. Thus Dr. Fredric Wertham, a leading American psychiatrist, wrote:

"There is with one exception no symptom in the whole field of psychopathology that would correspond to a really ungovernable or uncontrollable impulse. That exception is an obsessive-compulsive neurosis ... Yet compulsions play no role in criminal acts. Psychiatry is not a vague science. It can be stated flatly that compulsions are always unimportant and harmless acts ... Obsessions are not acts but ideas ... (and) ... are never acted out. In the whole literature of psychiatry there is not a single case where a violent act, homicidal or suicidal, constituted a symptom in an obsessive-compulsive neurosis" .

2

1. See Memorandum submitted by the Council of the British Medical Association to the Royal Commission on Capital Punishment. Min. of Evid., R.C.C.P., 3 February 1950, p. 318, par. 25.

2. Wertham, The Show Of Violence (N.Y. 1949) pp 13, 14. Dr. Wertham added: "The medico-legal theory of the irresistible impulse is advocated only by laymen and by psychiatrists who are scientifically not sufficiently oriented. It lends an air of scientific literalness and accuracy to a purely legal definition without any foundation in the facts of life or science".

Sir David Henderson said of irresistible impulse: "it is a perfectly impossible conception¹ to foster" . He also agreed that "as an attempt to take into account the wider aspects of human personality, the irresistible impulse is a misleading formula"² , and that however it operated in the United States, it was "beyond human faculty to present any form of irresistible impulse and yet preserve some form of justice"³ .

Under such categoric condemnation from leaders of the profession that would be called upon to relate the doctrine to their science, irresistible impulse could not be recommended today. There can be no doubt that diminished responsibility constitutes a preferable doctrine⁴ .

1. Min. of Evid., R.C.C.P. 6 April 1950, p. 469, par. 6427.

2. Ibid, p. 471, par. 6469.

3. Ibid, p. 472, Par. 6482.

4. Ibid, p. 471, par. 6471: "(Mr. Radzinowicz) : Assuming there was an attempt to take into account abnormality of mind, there is no necessity to use such a formula as irresistible impulse which is extremely difficult and misleading? Am I right in saying that these variations are well within the concept of diminished responsibility? -(Sir David Henderson) : "Yes, I think so".

TABLE NO. 9

SUMMARY OF AMERICAN JURISDICTIONS

Column Explanations:

- I. Double Form Of The McNaghten Knowledge Test
- II. Single Form Of The McNaghten Knowledge Test
- III. General Principles Of Absence Of Criminal Intent
(Without Specific Test)
- IV. Delusion Treated Under Knowledge Test
Or General Principles (No Special Test)
- V. Delusion Tried Under McNaghten Mistake-of-Fact
Rule
- VI. Irresistible Impulse
- VII. Grade Of Offence Reducible By Insanity

Symbol Explanations:

- † Approved Doctrine
- Rejected Doctrine
- ? Doubtful Doctrine
- X Aproved With Inconsistencies
- / Rejected With Inconsistencies

TABLE NO. 9 (Continued)

| JURISDICTION | : | I | : | II | : | III | : | IV | : | V | : | VI | : | VII |
|-------------------------|---|---|---|----|---|-----|---|----|---|---|---|----|---|-----|
| U.S. | : | † | : | † | : | | : | | : | | : | † | : | |
| Alabama | : | | : | † | : | | : | † | : | — | : | † | : | |
| Arizona | : | | : | † | : | | : | | : | | : | | : | |
| Arkansas | : | † | : | | : | | : | | : | x | : | † | : | — |
| California | : | † | : | † | : | | : | † | : | ? | : | — | : | — |
| Colorado | : | | : | † | : | | : | † | : | / | : | † | : | |
| Connecticut | : | † | : | | : | | : | | : | | : | † | : | † |
| Delaware | : | | : | † | : | | : | | : | | : | † | : | |
| District Of Columbia | : | | : | † | : | | : | † | : | — | : | † | : | — |
| Florida | : | | : | † | : | | : | | : | † | : | — | : | |
| Georgia | : | | : | † | : | | : | | : | | : | / | : | |
| Idaho | : | † | : | | : | | : | | : | | : | | : | |
| Illinois | : | | : | † | : | | : | † | : | | : | † | : | † |
| Indiana | : | † | : | † | : | | : | | : | x | : | † | : | / |

TABLE NO. 9 (Continued)

| JURISDICTION (Continued) | I | II | III | IV | V | VI | VII |
|-----------------------------|---|----|-----|----|---|----|-----|
| Iowa | † | † | | | † | / | |
| Kansas | † | | | † | | — | |
| Kentucky | | † | | † | | † | x |
| Louisiana | | † | | | | † | |
| Maine | † | | | | | — | |
| Maryland | † | | | | | — | |
| Massachusetts | | † | | | † | † | — |
| Michigan | | † | | | | † | |
| Minnesota | † | | | † | | — | |
| Mississippi | ? | † | | † | — | / | |
| Missouri | † | † | | † | | / | — |
| Montana | | ? | ? | † | — | † | |
| Nebraska | † | † | | † | / | / | / |
| Nevada | † | | | | † | / | |

TABLE NO. 9 (Continued)

| JURISDICTION (Continued) | : | I | : | II | : | III | : | IV | : | V | : | VI | : | VII |
|-----------------------------|---|---|---|----|---|-----|---|----|---|---|---|----|---|-----|
| New Hampshire | : | : | : | : | : | † | : | † | : | — | : | : | : | : |
| New Jersey | : | † | : | † | : | : | : | : | : | : | : | — | : | † |
| New Mexico | : | : | : | † | : | : | : | : | : | : | : | † | : | : |
| New York | : | † | : | : | : | : | : | † | : | ? | : | — | : | † |
| North Carolina | : | † | : | — | : | : | : | : | : | : | : | — | : | : |
| North Dakota | : | ? | : | † | : | : | : | : | : | : | : | : | : | : |
| Ohio | : | : | : | † | : | : | : | : | : | : | : | † | : | † |
| Oklahoma | : | ? | : | † | : | : | : | : | : | : | : | / | : | : |
| Oregon | : | † | : | † | : | : | : | : | : | : | : | / | : | : |
| Pennsylvania | : | : | : | † | : | : | : | † | : | : | : | / | : | / |
| Rhode Island | : | : | : | ? | : | : | : | : | : | : | : | : | : | † |

TABLE NO. 9 (Continued)

| <u>JURISDICTION</u> <u>(Continued)</u> | : | I | : | II | : | III | : | IV | : | V | : | VI | : | VII |
|---|---|---|---|----|---|-----|---|----|---|---|---|----|---|-----|
| South Carolina | : | ? | : | † | : | | : | † | : | | : | — | : | |
| South Dakota | : | | : | † | : | | : | | : | | : | | : | |
| Tennessee | : | † | : | † | : | | : | | : | † | : | / | : | † |
| Texas | : | † | : | † | : | | : | † | : | † | : | / | : | x |
| Utah | : | † | : | ? | : | | : | | : | † | : | x | : | † |
| Vermont | : | † | : | | : | | : | † | : | | : | † | : | |
| Virginia | : | † | : | | : | | : | | : | | : | † | : | † |
| Washington | : | | : | † | : | | : | | : | | : | ? | : | — |
| West Virginia | : | † | : | | : | | : | | : | | : | — | : | |
| Wisconsin | : | † | : | † | : | | : | | : | | : | / | : | † |
| Wyoming | : | † | : | | : | | : | | : | | : | † | : | |

SUMMARY OF RECOMMENDATIONS

TABLE NO. 10

SUMMARY OF RECOMMENDATIONS

The recommendations made may be summarized as:

I. Pre-Trial: Intensive medical investigation intended to corroborate the medical history; particularly intended for the cases of psychopathic personality. Appendix I. Psychopathic States: A Note On A Special Problem.

II. Preliminary Issue, or Plea In Bar Of Trial: Scottish incidence not recommended; suggested limitation to the essentials of capacity to instruct a defence and comprehend trial and crime charged.

III. Exculpatory Standard:

- a. McNaghten Rules not suggested.
- b. Knowledge test variants of McNaghten Rules not suggested.
- c. New Hampshire rule suggested.
- d. Scottish Exculpatory standard suggested.

IV. Supplemental Standard:

- a. Irresistible Impulse not suggested.
- b. Reduction in grade of offence not suggested.
- c. Doctrine of diminished responsibility suggested.

APPENDIX

APPENDIX A

PSYCHOPATHIC STATES
A NOTE ON A SPECIAL
MEDICO-LEGAL PROBLEM

What may be described as a special problem class within the problem area are the conditions termed "psychopathic states".

1

Sir D.K. Henderson¹ has defined these conditions and classified them clinically as follows:

- "(1) Predominantly aggressive".
- "(2) Predominantly inadequate".
- "(3) Predominantly creative".

It is the first category that comes before the Courts on capital charges and the more serious crimes. This group exhibits "disorders of conduct which may reach the highest degree of violence ... towards themselves or others".

1. Sir D.K. Henderson, Psychopathic States;
Sir D.K. Henderson and Dr. R.D. Gillespie, Textbook
of Psychiatry.

The second group has two main types, of which one is of particular interest to the lawyer: "the petty delinquent class with thieving, ¹lying, swindling propensities" .

The violent category (predominantly aggressive) can be fitted into an exculpatory test or diminished responsibility doctrine only with the greatest difficulty, if at all. To facilitate consideration of possible means of handling this group, two representative recent examples will be examined in the following pages.

1. The other sub-class consists of "those who develop types of invalidism closely allied to psychoneurotic and psychotic states".

R. v. HEATH

Neville G.C. Heath had been committed on charges of murdering Mrs. Margery Gardner and Miss Doreen Marshall. He was tried and convicted only on the charge of murdering Mrs. Gardner. The trial began on September 24, 1946.

There was no dispute that Heath had killed Mrs. Gardner or, for that matter, Doreen Marshall. The post mortem on Mrs. Gardner indicated death by suffocation. Before death she had been beaten severely enough to leave seventeen lash marks such as were consistent with infliction by a riding whip. She had been bitten on the upper part of her body, and on the lower part of her body was a seven inch wound which was consistent with infliction by the steel tip of a swagger stick. Her face also bore marks of violence. Her ankles were tied together, and marks on her wrists indicated that they had also been bound.

Heath's history was rather checkered. He left school at the age of seventeen and one-half and joined the Territorial Forces. Nine months later, in February, 1936, he joined the Royal Air

Force from which he was dismissed after having been court-martialled in 1937 and convicted of being A.W.O.L, of escaping while under arrest, and of taking an automobile without authority. In November of the same year, he was convicted at Nottingham for obtaining credit by fraud at a hotel, and for attempting to obtain a car by false pretenses. Eight other fraud charges were also taken into consideration. He was placed on probation.

In July, 1938, he was convicted at the Central Criminal Court for stealing jewelry and for obtaining clothing by forgery. Ten other instances of fraud were taken into consideration. He was sentenced to three years' Borstal treatment but was released in September, 1939 due to the national emergency.

He enlisted in the Army in October of the same year and in 1940 was commissioned second lieutenant. In July, 1941, he was again court-martialled and dismissed from the service upon conviction on the following charges: failing to obey army orders; obtaining a second pay book by false statement; and making a false statement to

his commanding officer. In addition, there were five charges concerning a dishonoured cheque.

He next proceeded to South Africa where he first posed as Captain Selway and later adopted the name Armstrong under which he joined the South African Air Force in December, 1941. He again obtained a commission and rose to the rank of captain. He was also married, and divorced by his wife nine months later while in South Africa. In December, 1945, he was court-martialled for the third time. He was convicted on six charges; three concerned with conduct prejudicial to good order and military discipline, and three concerned with wearing decorations without authority. He was again dismissed from the service and arrived in London in February, 1946.

Two months later he was fined at Wimbledon magistrates' court for unlawfully wearing military uniform and decorations. Three months later, on July 21st, he killed Mrs. Gardner.

The first defence witness was Dr. McGaffey, a pathologist, who had performed the post mortem on Doreen Marshall, the other victim. The injuries

and mutilation of the body were analogous to the instant case.

Dr. William Henry Duval Hubert was the other witness called by the defence. The case for the defence rested largely on his psychiatric testimony. Upon re-examination, the defence brought out the further fact that Heath had attacked still another woman earlier in the year, but that no prosecution had ensued.

Dr. Hubert said that Heath was rather casual in manner after both killings and appeared to show no remorse. In answer to a question by defence counsel, the psychiatrist stated as his conclusion that Heath "... is not an ordinary sexual "pervert but that he is suffering from moral insanity "and at times he is quite unaware that what he is "doing is wrong". The physician gave it as his opinion that Heath was certifiable on the ground of moral insanity and stated, "I think he appreciated "what he was doing and appreciated the consequences, "but did not appreciate that what he was doing was "wrong". On cross-examination, the medical expert reaffirmed his position and stated categorically

that Heath would think what he was doing was right and that he would think so because, in the words of prosecuting counsel, Heath "was a perverted sadist".

Dr. Hubert stressed the fact that sexual perversion alone was not enough, but when taken in conjunction with crimes in other fields as well, it was possible to come to a conclusion of general moral degeneracy in Heath's case. Prosecuting counsel asked, "Are you saying that this man is a "moral defective?- In law?" Upon receiving affirmative answers to both questions, the prosecution quoted from the Mental Deficiency Act of 1927 in which the essential elements of the moral defective were defined as strong, vicious or criminal propensities and arrested or incomplete mental development existing before eighteen years of age. The medical witness admitted that he had "... no "evidence one way or the other" as to whether such conditions existed in Heath before the age of eighteen.

Dr. Hugh A. Grierson was called by the prosecution. He stated that while Heath was a sadist he was not insane and that there was no

history of mental abnormality during Heath's youth. He testified that he found no evidence that Heath was suffering from mental disease and he did not agree that Heath did not know that what he was doing was wrong. Upon cross-examination, he admitted that Heath had not been cooperative and that Heath had probably given the defence psychiatrist more information. The psychiatric expert agreed that Heath was a psychopathic personality and a most abnormal individual but insisted that Heath knew the acts he was doing were wrong. The medical witness also pointed out that "This man is twenty-nine, and to "be a moral defective it would have to be obvious "before the age of eighteen years". This response was given in answer to a question by the defence as to the importance of delinquency such as swindling, lying and fraud when taken in addition to sadism.

Dr. Hubert Turner Young, also called by the prosecution, gave it as his opinion that Heath was not insane but was a psychopathic personality and a sadist. In his opinion, Heath was not suffering from a disease of the mind and was not prevented from knowing what he was doing. Further, his view was that Heath knew that what he was doing was wrong.

Mr. Justice Morris summed up in terms of the McNaghten Rules and further pointed out that a strong sexual instinct was not, of itself, insanity. He noted that the defence regarded this case as an instance of partial insanity. He told the jury that the issue before them was not whether Heath was morally insane, but whether he was insane. He further told them that the question of whether Heath was mentally defective was not before them. The issue, he said, was whether Heath did not know he was doing what was wrong. The jury brought in a verdict of guilty and Heath was sentenced to death.

R. v. HAIGH

John George Haigh was tried on July 18, 1949 for the murder of Mrs. Olive Durand-Deacon. Haigh had also confessed to killing a total of nine people. Defence counsel did not dispute that Haigh had done the killing, nor that he had attempted to dispose of the body in a vat of acid, nor that he had disposed of some of his victim's possessions for profit, nor that he had attempted to dispose of other possessions. The defence was insanity, and rested upon the psychiatric testimony of Dr. Henry Yellowlees, the only witness called by the defence. The prosecution did not call any medical evidence in rebuttal.

Dr. Yellowlees testified that Haigh had "very obviously what is generally called a paranoid constitution". At a later point he explained that "A large number of false pretenses people and confidence tricksters have got the paranoid constitution. It is an abnormality, but not a disease of the mind". He pointed out further that pure paranoia was a form of egocentric paranoia and was sometimes called ambitious and sometimes mystical.

He added that, except for long standing cases, the patient usually did not get to the point of regarding himself as a God. The psychiatric expert stated, "Usually he stops short of that and regards himself "as in mystic communion with some force or principle, "an outside power which guides him. I believe the "process has begun in this case, but I cannot tell "you how far it has gone".

Dr. Yellowlees said also that Haigh regarded himself as "the instrument of the outside "power ... However, he says that after the killing "he took every possible precaution to avoid detection "because he knew perfectly well that murder is "punishable by law and like every sensible man he "was anxious to avoid it". Mr. Justice Humphreys then asked, "Have I got this right? He told you "he took steps to avoid detection because he knew "quite well that to kill a person was a crime?" Dr. Yellowlees replied, "Yes, I think he used the "phrase 'punishable by law' and he added that it "did not apply in his case". The Judge then queried, "What did not apply?" The medical witness answered, "That murder being punishable by law did not apply "to him. He says he is working under guidance and

"in harmony with some guiding personality".

In cross-examination the Attorney General, Sir Hartley Shawcross, K.C., asked for the prosecution, "Would you call Haigh a lunatic in every day language?" Dr. Yellowlees answered, "Among doctors I would". The Attorney General asked, "This man knew the nature and quality of what he was doing very well?", and received the reply, "Yes, perfectly".

Dr. Yellowlees was then asked, "Did he know that what he was doing was wrong?", and answered, "I have no opinion to give you on that". The Attorney General asked, "Did he realise the law of this country was binding upon him?", and was told, "I am not satisfied about that. I wish I could be. I am not satisfied he did not know it was wrong". Mr. Justice Humphreys then interposed, "If you substitute the word believe for the word know, will it be as difficult?" Upon being told, "It would be easier, my lord," the Judge stated, "Then would you substitute the word believe for the word know, and then answer the question: 'Did this man believe that what he was doing was wrong?'".

Dr. Yellowlees replied, "I think it is very "doubtful". The Attorney General asked, "I am "asking you to look at the fact that he must have "known, according to English law, that he was "preparing to do something which was wrong?" The physician replied, "I will say 'Yes' to that if "you will say 'punishable by law'". The Attorney General then asked the crucial question, "Punishable "by law and therefore wrong by the law of this "country?" The medical witness answered, "Yes, I "think he knew that".

Haigh's medical history, as developed by Dr. Yellowlees, was that Haigh had been "brought up "in a fanatically religious atmosphere ... and that "wrath and vengeance of God were held over his head "as a punishment for every trifling misdemeanor". During his teens there was a change in his religious surroundings when he went from the Plymouth Brethren to Wakefield Cathedral. Dr. Yellowlees said this was a change from a "form of worship and belief in "which he did not himself believe and of which he "was frightened" to "the opposite extreme, the form "of worship where ritual and mysticism held a very "much more prominent place and by entering into

"that he avoids the conflict between beliefs he
"has got".

At about that time there began "a constant-
"ly recurring dream .. of the bleeding Christ ...
"on the Cross with blood pouring from his wounds".
When Haigh was sixteen or seventeen his first
"conscious revelation" took place and he believed
that he "was divinely guided to interpret a verse
"in the Old Testament as an instruction to drink
"his own water", a practice which Dr. Yellowlees
said he understood Haigh "has consistently followed".

In or about 1944, "after a motor car
"accident ..." in which "a lot of blood from a
"scalp wound ran into his mouth and ... revived his
"ideas about blood", Haigh began to experience his
"tree dream". He saw himself in "an entire forest
"of crucifixes ... (that) ... gradually turned into
"trees ... dripping with dew or with rain (and)
"as he gets nearer he sees that it is blood that
"is dripping...". A tree "gradually assumes the
"shape of a man who, holding a bowl or cup under
"one of the dripping trees, collects the blood that
"comes from it ... (and) ... he sees the tree

"getting paler in color and he himself feels that he is losing strength". The man offers the full cup to him "and invites him to drink it". He is "unable to move towards the man ... the man recedes".... and the dream ends". This dream "may be repeated for some nights in succession". Haigh said, according to Dr. Yellowlees' testimony, that this dream occurs before each of the killings. After one or two of the killings the dream again occurred "but this time the man does not recede from him and he is able to drink the blood". In his confession Haigh mentioned drinking the blood of a number of his victims.

Dr. Yellowlees pointed out a complete absence of any sexual interest or activity in Haigh. The medical witness also observed that Haigh "says he believes that the killings are the third revelation and he is not quite clear yet, but he thinks that may have to do with eternal life, but he doesn't know how".

One notable feature of the Haigh case was the reliance upon a single psychiatric expert to establish the entire case for the defence. There

was no corroboration of the medical history by relatives or people who had known Haigh in childhood or adult life. In his charge to the jury, Mr. Justice Humphreys emphasised this point saying, "In this case, the somewhat unusual course has been adopted of not calling any evidence at all for the defence as to the state of mind of the man, or ask a single question of any of the witnesses as to whether the man exhibited any peculiarities which would make people think he was not a perfectly sane, ordinary person. The man himself might have given evidence if he wished ... His father might have been called to say something about his upbringing. But no, the defence are content to say to you, we call an expert upon insanity and disease of the mind, who has formed an opinion".

Conclusions And Recommendations

Mr Justice Humphreys noted in the Haigh case that not a single question was asked by the defence of any witness as to whether Haigh "exhibited any peculiarities which would make people think "he was not a perfectly sane, ordinary person". Much the same thing could be said for Heath. In the Scottish case of Carraher, also involving a psychopath, Lord Normand noted, "It may be timely "to say also that little weight attaches to medical "evidence which is based on a history of the panel's "conduct about which no evidence has been led "before the jury".

The reason for this lack of corroboration of the case history upon which the psychiatrist founds part of his opinion may be found in the cost, skill, time and complexity of the investigation needed. Few defendants have the resources, few ordinary investigators the skill, few psychiatrists the time or staff, and few lawyers the facilities for so specialized an undertaking. Yet without it there would seem to be little hope for separating those who might be found non-responsible, or at

least of diminished responsibility, from those who would in any event have been found responsible. without a fairly detailed account of instances of abnormality over a long period prior to the criminal act, no amount of psychiatric opinion can persuade the jury, or even the Judge, that the psychopath is anything more than a depraved criminal.

Such investigation would have to be conducted at public expense to become at all feasible. Already in Scotland the Crown secures the expert testimony of eminent alienists when a plea in bar of trial, or to elude conviction, has been made or seems likely to be made. This falls short in several respects, however.

First, there is nothing to assure that mental examination will be made in all cases that it should be, even though as a matter of practice it usually is. The Briggs Law in Massachusetts offered some improvement in this respect, in that it required mental examination in certain classes

of cases ¹ while leaving it open to be requested by either side or by the Court in the remaining situations.

In the second place the investigation would need to be of a more comprehensive nature than simple examination of the prisoner. It would require psychiatric social workers, under the direction of the examining psychiatrist, to investigate the medical history of the accused with the same care that a modern laboratory in forensic medicine examines clothing for blood stains. As Sir David Henderson pointed out, "We never can divorce the offence from the life history of the individual". And as was also indicated before the Royal Commission On Capital Punishment, in certain continental countries "persons awaiting trial are very frequently sent for admission to the local

1. The main classes are: capital cases, previous conviction of felony, or previous record of having been indicted more than once on the same type of charge.

"university psychiatric clinic, where they are
"thoroughly examined by a most highly trained team
"of doctors and nurses, fully equipped with every
"type and means of scientific investigation, and ...
"a report is eventually forwarded to the court, not
"to one side or the other".

The circumstances surrounding such medical investigation are essentially a medical problem. To a lawyer looking at the trials of psychopathic personalities, such detailed investigation seems more important than even the nature of the legal tests applied to the accused. The maxim "ex facto oritur jus" is still applicable, and it is most strongly recommended that comprehensive investigation be made a prerequisite to the trial of the problem cases in insanity, particularly the psychopaths.

BIBLIOGRAPHY

APPENDIX B : BOOKS

- ADLER, Herman M., "Medical Science and Criminal Justice", Criminal Justice in Cleveland, Sec. 5. Cleveland: The Cleveland Foundation, 1922.
- ALEXANDER, F. and HEALY, W., Roots of Crime: Psychoanalytic Studies, New York: Knopf, 1935.
- ALEXANDER, F. and STAUB, Hugo, The Criminal, The Judge and the Public: A Psychological Analysis, New York: Macmillan & Co., 1931.
- ALISON, Archibald, Principles of the Criminal Law of Scotland, Edinburgh: Wm. Blackwood, London: T. Cadell, Strand, 1832.
- ALISON, Archibald, Practice of Criminal Law of Scotland, Edinburgh: Wm. Blackwood, London: T. Cadell, Strand, 1833.
- AMERICAN BAR ASSOCIATION, Reports. Volume xxxiv (1909); Volume xliv (1919); Volume li (1926); Volume liv (1929). Baltimore: The Lord Baltimore Press.
- AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY, Committee on insanity and criminal responsibility. A collection of state statutes relating to insanity in criminal cases. Third report of Committee B of the American Institute of Criminal Law and Criminology. Chicago? 1913.
- AMERICAN LAW INSTITUTE, Code of Criminal Procedure, Final Draft. Philadelphia: The American Law Institute, 1930.
- AMERICAN PSYCHIATRIC ASSOCIATION, Project of a law to determine the legal relations of the insane, adopted by the Association of Medical Superintendents of American Institutions for the insane, at the meeting in Boston, June, 1868.
- AMOS, Sheldon, The History and Principles of the Civil Law of Rome, London: Kegan Paul, Trench and Co., 1883.
- ANDERSON, A.M., The Criminal Law of Scotland, Edinburgh: 1892.

- ANDREWS, Samuel M., Report of the trial of Samuel M. Andrews, indicted for the murder of Cornelius Holmes, before the Supreme judicial court of Massachusetts, December 11, 1868. By Charles G. Davis.. New York, Hurd and Houghton; Cambridge, Riverside press, 1869.
- ARCHBOLD. John Frederick, Lunacy and Mental Deficiency. Fifth Edition, by James William Greig and William H. Gattie, London: Butterworth & Co., 1915.
- ARCHBOLD'S Pleadings, Evidence and Practice in Criminal Cases. By Sir John Jervis. Twenty-sixth Edition by Henry Delacombe Roome and Robert Ernest Ross, London: Sweet and Maxwell, 1922.
- ARDIN-DELTEIL, P. L'Epilepsie psychique, ses rapports dans l'alienation mentale et la criminalité., 1898.
- ARNOT, Hugo, A Collection and Abridgement of Celebrated Criminal Trials in Scotland. From A.D. 1536 to 1784, with historical and critical remarks, Glasgow: A. Napier, 1812.
- ASWELL, Mary Louise, Editor, Introduction and Analysis by Frederic Wertham, M.D. , The World Within, Fiction Illuminating Neuroses of our Time. Whittlesey House: McGraw-Hill, New York, London, Copyright 1947- McGraw-Hill.
- AUSTIN, John, Lectures on Jurisprudence, or the Philosophy of Positive Law. Fifth Edition, revised and enlarged by Robert Campbell. London: J. Murray, 1885.
- BARNARD, Horace, Experts as Witnesses. A Lecture before the New York medico-legal society, by Horace Barnard, February 26, 1874. New York: Russell Brothers, printers, 1874.
- BARNES, Harry E. and TEETERS, N.G., New Horizons in Criminology, New York: Prentice-Hall, 1943.

- BARNETT, Norman, Legal Responsibility of the Drunkard, London: Bailliere, Tindall & Cox, Henrietta Street, Covent Gardens, 1908.
- BARROWS, S.J., The Criminal Insane in the U.S. and in Foreign Countries. Report. Washington, 1898. (U.S. Senate Documents. 55th Congress, 2nd Session No. 273).
- BARRY, John V., K.C., Insanity in the Criminal Law in Australia. Radzinowicz, L. and Turner, J.W.C., Editors. Pamphlet Series. Published by The Canadian Bar Association, Editor: Cecil A. Wright, K.C., Osgoode Hall Law School, Toronto, Ontario.
- BECCARIA, An Essay on Crimes and Punishment. A New Edition. Edinburgh: Printed by Bell and Murray for W. Gordon & W. Creech, 1778.
- BECK, Theodric R. and John B., Elements of Medical Jurisprudence. Eleventh Edition. Three Volumes. Philadelphia: J.B. Lippincott & Co., 1860.
- BEHREND, Ernst, Das englische gesetz betreffend die fürsorge und verwahrung geistig minderwertiger. Aus dem englischen übers. von dr. jur. E. Behrend. Berlin: J. Guttentag, 1914.
- BELL, Benjamin Robert, A Supplement to Hume's Commentaries. Edinburgh:, 1844.
- BELL, Clark, Shall We Hang the Insane Who Commit Homicides? New York: 1855.
- BELL, Clark, Medico-Legal Studies. New York: Medico-Legal Journal, 1889-19.
- BELL, John Cromwell, The Medical Witness; an address delivered at the twenty-third annual dinner of the alumni associations of the Medico-chirurgical college of Philadelphia. May 25, 1905. By Hon. John Cromwell Bell. Philadelphia 1905.

BINNEY, Cecil, Crime and Abnormality. London, New York, Toronto: Geoffrey Cumberlege, Oxford University Press. 1949.

BIRNBAUM, K., Der Psychopathischen Verbrecher, Ed.2. Leipzig, Thieme, 1926.

BISHOP, Joel Prentiss, New Commentaries on the Criminal Law Upon a New System of Legal Exposition. Eighth Edition being a new work based on former editions; Chicago: T.H. Flood and Co., 1892. Ninth Edition published under the title Bishop on Criminal Law, edited by John M. Zane and Carl Zollmann; Chicago: T.H. Flood & Co., 1923.

BISHOP, Joel Prentiss, New Criminal Procedure; or, New Commentaries on the Law of Pleadings and Evidence and the Practice in Criminal Cases. Second Edition by H.C. Underhill. Chicago: T.H. Flood & Co., 1913.

BLACKSTONE, Sir William, Commentaries on the Laws of England. In Four Books. Tenth Edition. London: Printed for A. Strahan, T. Cadell in the Strand & D. Prince, Oxford., 1787.

BLANDFORD, George Fielding, Insanity and its Treatment: lectures on the treatment, medical and legal, of insane patients. With a summary of the laws in force in the United States on the confinement of the insane. By Isaac Ray, M.D. Philadelphia: H.C. Lea, 1871.

BLEULER, Eugen, Lehrbuch der Psychiatrie. 8. Aufl. umgearb. von Manfred Bleuler unter Mitwirkung von Josef Berze (et al.) Berlin: Springer, 1949.

BOCKER, Friedrich Wilhelm, Lehrbuch der gerichtlichen medicin mit berücksichtigung der gasammten deutschen, und rheinischen gesetzgebung, als leitfaden zu seinen vorlesungen und zum gebrauche für aerzte und juristen bearbeitet von dr. Friedrich Wilhelm Böcker ;... 2. sehr verm. und verb. mit holzschnitten bereicherte aufl. Iserlohn, J. Bädeker, 1857.

BOSTON. Municipal Court. A Charge to the Grand Jury of the county of Suffolk, for the commonwealth of Massachusetts, at the opening of the Municipal court of the city of Boston, on Monday, December 7, 1835, being the day, on which the court first assembled in the new court house, Court Street. By Peter Oxenbridge Thacher, judge of that court. Boston, Dutton and Wentworth, printers, 1835.

BRACON, Henrici de, De Legibus et Consuetudinibus Angliae. London: 1640.

BRADNER, Nathaniel Roe, Not Guilty: by Reason of Insanity. Reprinted from Philadelphia medical times. Philadelphia, J.B. Lippincott & Co., 1884.

BRASOL, Boris, Elements of Crime, London: Oxford, 1927.

BREND, Wm. A., A Handbook of Medical Jurisprudence and Toxicology for the Use of Students and Practitioners. London: Chas. Griffin & Co., Ltd. 42 Drury Lane, 1928.

BREND, Wm. A., Traumatic Mental Disorders in Courts of Law. With a general survey of medical evidence and procedure in Civil actions. London: Wm. Heinemann (Medical Books) Ltd. 1938.

BRIERRE de BOISMONT, A., Manuel de Medicine Legale. A L'Usage des Jures, des Advocats et Des Medecins. Paris: J.B. Bailliere et fils, Libraires de L'Imperiale de Medecine, 19 Rue Hautefeuille, pres du boulevard Saint-Germain. 1837.

BROMBERG, Walter, Crime and the Mind. Philadelphia: J.B. Lippincott & Co., 1948.

BROTHERS, Elmer de Witt, Medical Jurisprudence; a statement of the law of forensic medicine, Third Edition. St. Louis, The C.V. Mosby Co. 1930.

- BROWN, George K., The Treatment of the Recidivist in the United States. Radzinowicz, L. and Turner, J.W.C., Editors. Published by the Canadian Bar Association. Editor: Cecil A. Wright, K.C., Osgoode Hall Law School, Toronto, Ontario.
- BROWN, M. Ralph, Legal Psychology; Psychology Applied to the Trial of Cases, to Crime and Treatment, and to Mental States and Processes. Indianapolis: The Bobbs-Merill Co. 1926.
- BROWNE, George Lathom, Reports of Trials for Murder by Poisoning; by prussic acid, strychnia, antimony, arsenic and aconitia. Including the trials of Tawell, W. Palmer, Dove, Madeline Smith, Dr. Pritchard, Smethurst, and Dr. Lamson, with chemical introduction and notes on the poisons used. By G. Lathom Browne and C.G. Stewart. London: Stevens & Sons, 1883.
- BROWNE, John Hutton Balfour, The Medical Jurisprudence of Insanity. Second Edition. With references to the Scotch and American Decisions. San Francisco, S. Whitney & Co., 1875.
- BRUCE, Dale, Kansas: Mental Health Laws in Brief, by Dale Bruce and Willard C. Hetzel. First Edition. Philadelphia, 1946.
- BUCHANAN, Robert James McLean, Buchanan's Text-book of Forensic Medicine and Toxicology. Ninth Edition, rev. and enl. by John E.W. MacFall. Edinburgh: E. & S. Livingstone, 1925.
- BUCHANAN, R.J.M. and HOPE, E.W., Revision and Enlargement of Husband's Forensic Medicine, Toxicology and Public Health. Seventh Edition. Edinburgh: E. & S. Livingstone, 1904.
- BUCHANAN, William, Reports of Certain Remarkable Cases in the Court of Session and Trials in the High Court of Justiciary. Edinburgh: Printed for T. Allan & Co. for Archibald Constable & Co., 1813.

- BUCHNER, Ernst, Lehrbuch der gerichtlichen medicin für aerzte und juristen. Nacheigenen und fremden erfahrungen bearbeitet von dr. Ernst Buchner .. 2. vermehrte und mit rücksicht auf die deutsche gesetzgebung umgearbeitete aufl. Nach dem tode des verfassers hrsg. von dr. C. Hecker ... München, J.A. Finsterlin, 1872.
- BUCKHAM, Thomas R., Insanity Considered in its Medico-Legal Relations. Philadelphia: J.B. Lippincott & Co., 1883.
- BUCKNILL, Sir John Charles, Unsoundness of Mind in Relation to Criminal Acts. An essay to which the first Sugden prize was awarded by the King and Queen's college of physicians in Ireland. Second Edition. London: Longman, Brown, Green, Longmans & Roberts, 1857.
- BUCKNILL, Sir John Charles, The Care of the Insane and their Legal Control. Second Edition. London: Macmillan & Co., 1880.
- BURNETT, John, A Treatise on Various Branches of the Criminal Law of Scotland. Edinburgh, 1811.
- BURRIDGE, H.A. An Introduction to Forensic Medicine for Medical Students and Practitioners. London: H.K. Lewis & Co., Ltd. 1924.
- BURTT, Harold Ernest, Legal Psychology. New York: Prentice-Hall, Inc., 1931.
- BUSWELL, Henry Foster, The Law of Insanity and its Application to the civil rights and capacities and criminal responsibility of the citizen, Boston: Little, Brown & Co. 1885.
- CALIFORNIA, Laws, Statutes, etc. Lunacy law of the state of California, 1913. Sacramento, California. F.W. Richardson, superintendent of state printing. 1913.
- CAMARGO y MARÍN, César, El psicoanálisis en la doctrina y en la práctica judicial. Madrid: M. Aguilar, 1931.

- CAMMACK, J.S., Moral Problems of Mental Defect.
The Bellarmine Series: II. London: Burns Oates
and Washbourne, Ltd.
- CARDOZO, Benjamin Nathan, What Medicine Can Do For
Law. New York and London: Harper & Bros., 1930.
- CARR, William Wilkins, The Suggestion of Insanity
in Criminal Cases and the Trial of the
Collateral Issue. Philadelphia: T. & J.
Johnson & Co., 1890.
- CASPER, Johann Ludwig, A Handbook of the Practice
of Forensic Medicine, Based upon Personal
Experience. Tr. from the Third Edition of the
original by George William Balfour, London:
The New Sydenham Society, 1861.
- CHALONER, John Armstrong, The Lunacy Law of the
World. Being that of each of the forty-eight
states and territories of the United States,
with an examination thereof and leading cases
thereon: together with that of the six great
powers of Europe- Great Britain: France: Italy:
Germany: Austria-Hungary: and Russia. Roanoke
Rapids, N.C., Palmetto press, 1906.
- CHANNING, Walter, The Mental Status of Guiteau, the
Assassin of President Garfield. Cambridge,
Printed at the Riverside press, 1882.
- CHANNING, Walter, Medical Expert Testimony in the
Kelley murder trial. Boston: 1898.
- CHAPMAN, Henry Cadwalader, A Manual of Medical
Jurisprudence, Insanity and Toxicology, Third
Edition, thoroughly rev. Philadelphia: London:
W.B. Saunders & Co., 1903.
- CHEVERS, Norman, A Manual of Medical Jurisprudence
for India, Calcutta: Thacker, Spink & Co.
Publishers to the University. London: W.
Thacker & Co., 1870.

- CHITTY, Joseph, A Practical Treatise on Medical Jurisprudence, with so much of anatomy, physiology, pathology, and the practice of medicine and surgery, as are essential to be known by members of Parliament, lawyers, coroners, magistrates, officers in the army and navy, and private gentlemen; and all the laws relating to medical practitioners; with explanatory plates. In Two Volumes. London: Sold by Longman, Rees, Orme, Brown, and Green, etc. 1834.
- CHRISTISON, J.S., Crime and Criminals. Second Edition. Published by J.S. Christison, 100 State Street, Chicago, 1899.
- CLARK, Willard, defendant, Report of the Trial of Willard Clark, indicted for the murder of Richard W. Wright, before the Superior Court of Connecticut, holden at New Haven, on Monday, Sept. 17, 1855. By H.H. McFarland, assisted by the counsel for the state and defense. New Haven, T.H. Pease, 1855.
- CLEVENGER, Shobal Vail, Medical Jurisprudence of Insanity; or Forensic Psychiatry. With an exhaustive presentation of the judicial decisions upon the subject. By F. H. Bowlby. Rochester, N.Y., The Lawyers' Co-operative Publishing Co., 1898.
- CLOUSTON, Sir Thomas Smith, Clinical Lectures on Mental Diseases. To which is added, an abstract of the statutes of the United States and of the several states and territories relating to the custody of the insane. By Charles F. Folsom. Philadelphia: H.C. Lea's Son, & Co. 1884.
- COHEN, Herman, The Spirit of Our Laws. British Justice at Work. Edited by A.P.G. Ransome. Methuen & Co., Ltd. London.

- COKE, Sir Edward, The Reports of Sir Edward Coke, Knt. In English in 13 parts complete; With references to all ancient and modern books of law. Exactly translated and compared with the first and last edition in French, and printed page for page with the same. To which are now added: The Respective Pleadings, in English by George Wilson, Serjeant at Law. London:, 1776.
- COKE, Sir Edward, The First Part of the Institutes of the Laws of England; or a Commentary upon Littleton. Fifteenth Edition, Rev. and Corrected. London: Printed for E.& R. Brooke, 1794.
- COKE, Sir Edward, The Third Part of the Institutes of the Laws of England Concerning High Treason, and Other Pleas of the Crown and Criminal Causes. Fifteenth Edition, rev. and Corrected. London: Printed for E.& R. Brooke, 1797.
- COLLINSON, George Dale, A Treatise on the Law Concerning Idiots, Lunatics, and other Persons Non Compotes mentis. With an appendix, containing the statutes relating to lunatics, the practice on proceedings in lunacy, and a collection of lunatic petitions, with the orders of the chancellor thereon. London: W. Reed, 1812.
- COMMON LAW OF ENGLAND, The. By a King's Counsel with a foreward by the Rt. Hon. Viscount Jowitt of Stevenage, Lord High Chancellor. London: Hollis & Carter, 1948.
- COMSTOCK, A. Drunkenness in Extenuation of Murder, being the Johnson prize essay of the Duke university for the year 1886. Philadelphia: T. & J.W. Johnson & Co., 1890.
- CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS. An Act to provide for the extradition of persons of unsound mind, and to make uniform the laws of the states which enact the same. 1916.

- CONNECTICUT. Commission to Study Laws and Facilities for Prevention, Treatment and Cure of Mental Disease and Defects. Report of the Commission to study laws and facilities for prevention, treatment and cure of mental diseases and defects. State of Connecticut. February, 1937. Hartford, 1937.
- COOK, W.G.H., Insanity and Mental Deficiency In Relation to Legal Responsibility. 1921.
- COOPER, Charles Furton, A Letter to the Lord Chancellor on a Defect in the Law Regulating the Custody of Lunatics. London: Stevens and Norton, 1849.
- COOPER, The Rt. Hon. Lord, Select Scottish Cases of the Thirteenth Century. Edinburgh and London: Wm. Hodge & Co., Ltd., 1944.
- COOPER, The Rt. Hon. Lord, Regiam Majestatem and Quoniam Attachiamenta, Stair Society. Edinburgh: 1947.
- COOPER, The Rt. Hon. Lord., The Scottish Legal Tradition. Published for the Saltire Society by Oliver and Boyd, Edinburgh: 1949.
- COOPER, Thomas, Tracts on Medical Jurisprudence. Including Farr's Elements of Medical Jurisprudence, Dease's Remarks on Medical Jurisprudence, Male's Epitome of juridical or Forensic Medicine, and Haslam's Treatise on Insanity. With a preface, notes and a digest of the law relating to insanity and nuisance. To which is added an appendix, containing Erskine's Speech for James Hadfield, indicted for shooting at the King. An Abstract of a report of the trial of Abraham Kessler, indicted for poisoning his wife with white arsenic, and laudanum, and a memoir on the chromate of potash, as a test for detecting arsenic, copper and corrosive sublimate: Read before the Am. ph. society, Sept. 18, 1818. Philadelphia, Pub. by James Webster, Thomas Town, printer, 1819.

- COWEN, Patrick Henry, Poor Laws of the State of New York, including the laws and decisions relating to the insane, idiots and habitual drunkards. With forms. Albany, N.Y.: W.C. Little & Co., 1887.
- COWPERTHWAIT, Allen Corson, Insanity in its Medico-Legal Relations. Philadelphia: J.M. Stoddart & Company, 1876.
- COX, Joseph Mason, Practical Observations on Insanity. To which are subjoined remarks on medical jurisprudence as connected with diseased intellect. From the 2d cor. and enl. London ed. Philadelphia: Published by Thomas Dobson, at the Stone House, no. 41 South Second Street. Fry and Kammerer, Printers, 1811.
- CRAIG, Sir Maurice, Crime and Insanity; being a paper read before ye Sette of odd volumes on May 27th, 1924, at Oddenino's imperial restaurant, by Sir Maurice Craig, M.D., thought-reader to ye Sett. London: Printed by Huggins and Co. and to be had at no booksellers, 1924.
- CRIMINAL LAW, Radzinowicz, L. and Turner, J.W.C., Editors. The Modern Approach to Criminal Law. IV English Studies in Criminal Science. Dept. of Criminal Science, Faculty of Laws, Cambridge University. London: Macmillan & Co., Ltd. 1948.
- CUMMING, Robert Cushing, ed. The Poor, Insanity and State Charities Laws of the State of New York. With forms and annotations. 2d rev. ed. (as amended to the close of the legislative session of 1904 and with decisions to June 1, 1904). By Robert C. Cumming and Frank B. Gilbert. Albany, New York: M. Bender, 1904.
- DAVEY, Herbert, ed. The Law Relating to the Mentally Defective. The Mental Deficiency Act, 1913, with introduction, notes, and appendices containing the Lunacy Act, 1890, as amended, and other statutes, regulations, circular letters, &c. Second Edition. London: Stevens and Sons, Ltd., 1914.

- DAVIS, O.C.M. and WILSHIRE, F.A., *Mentality and the Criminal Law*, Bristol: John Wright & Sons, Ltd. London: Simkin Marshall, Ltd., 1935.
- DEAN, Amos, *Principles of Medical Jurisprudence: designed for the professions of law and medicine*. New York: Albany: Banks & Bros. 1877.
- DeFLEURY, Maurice, *The Criminal Mind*, (translated from the French) London: Downey & Co., 1901.
- DEUTSCH, A., *The Mentally Ill in America*, 1937.
- DEVON, James, *The Criminal and the Community*, London: John Lane, The Bodley Head, New York: John Lane Co., 1912.
- DOCTOR AND STUDENT: or Dialogues Between A Doctor of Divinity, and A Student in the Laws of England. Printed by Eliz. Nutt and E. Gosling (assignes of Edward Sayer, Esq.) for R. Gosling at the Middle-Temple-Gate in Fleet Street, 1721.
- DRAPER, Frank Winthrop, *A Text-book of Legal Medicine*. Philadelphia, London: W.B. Saunders and Company, 1905.
- DWIGHT, Edwin Welles, *Medical Jurisprudence*. A manual for students and practitioners. Philadelphia and New York: Lea Brothers & Co. 1903.
- EARLE, Pliny, *Medical Opinion in the Parish Will Case*. (Extracted from the printed documents in the case). New York: J.F. Trow, printer, 1857.
- EAST, W. Norwood, *An Introduction to Forensic Psychiatry in the Criminal Courts*. London: J. & A. Churchill, 1927.
- EAST, W. Norwood, *Medical Aspects of Crime*. With Foreword by The Right Honourable Sir John Simon. London: J. & A. Churchill, 1936.
- EAST, W. Norwood, *Society and the Criminal*. Foreword by Sir Alexander Maxwell. London: His Majesty's Stationery Office, 1949.

- EAST, W. Norwood and HUBERT, W.H. DeB., The Psychological Treatment of Crime. London: His Majesty's Stationery Office, 1939.
- EAST, W. Norwood, STOCKS, P. and YOUNG, A.T.P., The Adolescent Criminal, 1942.
- ELLIS, Havelock, The Criminal, New York: Scribner and Welford, 1890.
- ELLIS, Havelock, Psychology of Sex, Philadelphia: Davis, 1923.
- ELMER, Joseph, The Practice in Lunacy Under Commissions and Inquisitions &c. with notes of cases and recent decisions, the statutes, rules, and forms, costs of proceedings, schedule of cases, and an index, adapted to the provisions of the Lunacy Act, 1890, together with a supplement adapted to the provisions of the Lunacy Act, 1891, and the rules in lunacy, 1892. Seventh Edition. London: Stevens & Sons, Ltd., 1892.
- EMERSON, Robert Leonard, Legal Medicine and Toxicology. New York and London: D. Appleton and Company, 1909.
- ERSKINE, John, An Institute of the Law of Scotland In the Order of Sir George Mackenzie's Institutions of that Law. In two volumes. Edinburgh: Printed for John Bell, at Addison's Head. 1773.
- ERSKINE, John of Carnock, Principles of the Law of Scotland Containing Extracts From the Lectures of George Moir, Esq. Seventeenth Edition. cor. and rev. Edinburgh: Bell and Bradfute, London: Wm. Maxwell & Son., 1886.
- ESQUIROL, Jean Etienne Dominique, Observations on the Illusions of the Insane, and on the Medico-Legal Questions of their Confinement. Translated from the French by William Liddell. London: Renshaw and Rush, 1833.

- EWELL, Marshall D., A Manual of Medical Jurisprudence for the use of students of law and of medicine. Second Edition. Boston: Little, Brown & Co., 1909)
- EXPERT TESTIMONY, Durham, N.C., School of Law, Duke University, 1935.
- FENNING, Frederick Alexander, The Discharge of Lunatics by Habeas Corpus Proceedings. Reprinted from the Journal of the American Medical Association, Feb 18, 1911, vol.LVI, pp. 489-492. Chicago, American Medical Association, 1911.
- FENNING, Frederick Alexander, The Trial of Guiteau. Baltimore, 1933.
- FERRI, Enrico, Criminal Sociology. Translated by Kelly, Joseph I and Lisle, John. Boston: Little, Brown & Co., 1917.
- FISHER, Theodore Willis, Plain Talk About Insanity: its causes, forms, symptoms, and the treatment of mental diseases. With remarks on hospitals and asylums, and the medico-legal aspect of insanity. Boston: A. Moore, 1872.
- FITZHERBERT, Anthony, The New Natura Brevium. Seventh Edition, 1730. Eighth Edition, 1755.
- FLINT, Austin, Notes and Citations on the Homicidal Insanities and Feigned Insanity. New York: Priv. print., 1907.
- FOLSOM, Charles Follen, Abstract of the Statutes of the United States, and of the several states and territories, relating to the custody of the insane. By Charles F. Folsom.. with the assistance of Mr. Hollis R. Bailey. Philadelphia, H.C. Lea's Son & Co., 1884.
- FOLSOM, Charles Follen, Studies of Criminal Responsibility and Limited Responsibility. Boston?: Priv. print., 1909.

- FORTESCUE, Sir John, *De Laudibus Legum Anglie*, Edited and Translated with Introduction and Notes by S.B. Chrimes. Cambridge University Press, 1949.
- FRAZER, Sir James J., *The Golden Bough: A Study in Magic and Religion*. Abridged Edition. New York: The Macmillan Co., 1922.
- FREUD, Sigmund, *Criminality from a Sense of Guilt*, Collected Papers. Volume 4, London: Hogarth Press, 1924.
- FRY, Danby Palmer, *The Law Relating to Lunacy and Mental Deficiency comprising the Lunacy Acts, 1890 to 1911; the Mental Deficiency Act, 1913; etc.* Being the Fourth Edition of "Fry's Lunacy Laws", 1st and 2d ed. by Danby P. Fry. 4th ed. by John Lithiby. London: Knight & Co., Ltd. 1914.
- FUSON, William Meeker, *Iowa: Mental Health Laws in Brief*, by William Fuson and Willard C. Hetzel. First Edition. Philadelphia, 1948.
- GATTIE, William Herbert, *Legal Aspects of Mental Illness. Procedure*. Third Edition. London: Shaw & Sons, Ltd., 1933.
- GLAISTER, John, *Medical Jurisprudence and Toxicology*. Eighth Edition, Revised Reprint. Edinburgh: E. & S. Livingstone, Ltd., 1947.
- GLUECK, Bernard, *Studies in Forensic Psychiatry*. Criminal Science Monograph No. 2. Supplement to the Journal of The American Institute of Criminal Law and Criminology. London: William Heinemann, 1916.
- GLUECK, Sheldon, *Mental Disorder and the Criminal Law*. Boston: Little, Brown & Co., 1925.
- GLUECK, Sheldon and GLUECK, Eleanor J., *500 Criminal Careers*. New York: Knopf, 1930.
- GLUECK, Sheldon and GLUECK, Eleanor J., *Criminal Careers in Retrospect*. New York: Commonwealth Fund, 1943.

- GODDARD, Henry H., The Criminal Imbecile; An Analysis of Three Remarkable Murder Cases, New York, The Macmillan Co., 1915.
- GOLDSMID, Edmund, Bibliotheca Curiosa. The Trial of Francis Ravallac for the Murder of King Henry the Great. Edinburgh: Privately printed, 1885.
- GONZALES, Thomas Arthus, Legal Medicine and Toxicology, by Thomas A. Gonzales, Morgan Vance and Milton Helpen. With a foreword by Harrison S. Martland. New York: London: D. Appleton-Century Co., Inc., 1940.
- GOODWIN, John C., Insanity and the Criminal. London: Hutchinson & Co., 1923.
- GORING, Charles, The English Convict. London: His Majesty's Stationery Office, 1913.
- GRASSET, Joseph, The Semi-Insane and the Semi-Responsible (Demifous et demiresponsables). Authorized American Edition, translated by Smith Ely Jelliffe. New York and London: Funk and Wagnalls Co., 1907.
- GRAY, John Purdue, An Abstract of the Laws of the State of New York, in regard to the commitment of insane to asylums, their detention and discharge, and comparison of the same, with the statutory provisions of England. Utica?, New York, 1879.
- GREAT BRITAIN, Laws Statutes, etc. Criminal Responsibility (trials). An act to declare and amend the law relating to the criminal responsibility of accused persons. London: His Majesty's Stationery Office, 1924.
- GRISSOM, Eugene, True and False Experts. To which is appended a rejoinder to Dr. Hammond's "Open letter", with a postscript. Raleigh, N.C., J. Nichols, printer, 1878.

- GROSS, Hans, Criminal Investigation. A Practical Handbook for Magistrates, Police Officers and Lawyers. Translated and abridged from the German by John Adam and J. Collyer Adam. Rochester, New York: The Lawyers Co-operative Publishing Co., 1907.
- GROSS, Hans, Criminal Psychology, Fourth German Edition. Translated by Horace M. Kallen. Boston: Little, 1911.
- GROSSMAN, Gustav, A Guide to Lunacy Practice, or the Practice of the Management and administration Department of the High Court Under the Lunacy Acts, 1890 to 1922 (now referred to as Vic. 53, c. 5, and amending acts) by G. Grossman and John J. Wontner. London: Sir I. Pitman and Sons, Ltd., 1934.
- GUERNSEY, Rocellus Sheridan, Juries and Physicians on Questions of Insanity. New York: J.R. McDivitt & Co., 1872.
- GUTHRIE, Douglas, A History of Medicine. London, Edinburgh, New York: Thomas Nelson & Sons, Ltd. 1945.
- GUY William Augustus, Dr. Guy on Insanity and Crime, and on the plea of insanity in criminal cases. London: Harrison & Sons, printers in ordinary to Her Majesty, 1869.
- GUY, William A. and FERRIER, David, Principles of Forensic Medicine. Fifth Edition. London: Henry Renshaw, 1881.
- HALE, Sir Matthew, Historia Placitorum Coronae. The History of the Pleas of the Crown. First American Edition, with notes and references by W.A. Stokes and E. Ingersoll. Philadelphia: R.H. Small, 1847.
- HALL, Livingston, and GLUECK, Sheldon, Cases and Materials on Criminal Law. American Casebook Series. Warren A. Seavey, General Editor. St. Paul, Minn.: West Publishing Co. 1940.

- HAMILTON, Allan McLane, A Manual of Medical Jurisprudence, with special reference to diseases and injuries of the nervous system. New York: E.B. Treat, 1887.
- HAMILTON, Allan McLane, Recollections of an Alienist, personal and professional. New York: George H. Doran Company, 1916.
- HAMILTON, Allan McLane, A System of Legal Medicine, by Allan McLane Hamilton and Lawrence Godkin.. (and others). Illustrated. Second Edition. New York: E.B. Treat & Co., 1900.
- HAMMOND, William Alexander, Insanity in its Relations to Crime. A Text and a Commentary. New York: D. Appleton & Co., 1873.
- HANSARD's Parliamentary Debates; Third Series; Commencing with the Accession of William IV, Vol. 67. London: Thomas Curson Hansard, 1843.
- HARRISON, George Leib, Legislation on Insanity. A Collection of all the lunacy laws of the states and territories of the United States to the year 1883, inclusive. Also the laws of England on Insanity, legislation in Canada on private houses, and important portions of the lunacy laws of Germany, France, etc. Philadelphia, Priv. print. (Globe Printing House), 1884.
- HASLAM, John, Medical Jurisprudence, as it Relates to Insanity, according to the Law of England. London: Printed for C. Hunter(etc.) 1817.
- HASLAM, John, A Letter to the Right Honourable the Lord Chancellor, on the Nature and Interpretation of Unsoundness of mind, and imbecility of intellect. London: R. Hunter, 1823.
- HAWKINS, William, A Treatise on the Pleas of the Crown. Eighth Edition by John Curwood. London: Printed for S. Sweet, 1824.
- HAWTHORNE, C.O., Forensic Medicine and Toxicology. Third Edition. London: Edward Arnold, 1912.

- HEALY, W., Pathological Lying, Accusation and Swindling, A Study in Forensic Psychology. Boston: Little, 1926.
- HEALY, William and ALPEN, B.S., Criminal Youth and the Borstal System. New York: The Commonwealth Fund, London: Humphrey Milford, Oxford University Press, 1941.
- HEALY, William and BRONNER, Augusta, Delinquents and Criminals: Their Making and Unmaking. New York: Macmillan Co., 1926.
- HENDERSON, Sir D.K., Psychopathic States. London: Chapman Hall, Ltd., 1939.
- HENDERSON, Sir D.K. and GILLESPIE, R.D., A Text-Book of Psychiatry for Students and Practitioners. Sixth Edition. London, New York, Toronto: Geoffrey Cumberlege, Oxford University Press. 1946.
- HENKE, Adolph Christian Heinrich, Lehrbuch der gerichtlichen medicin. Zum behuf akademischer vorlesungen und zum gebrauch für gerichtliche ärzte und rechtsgelehrte entworfen von Adolph Henke.. 9. neu durchgesehene und verm. ausg. Berlin: F. Dümmler, 1838.
- HERZOG, Alfred Waldemar, Medical Jurisprudence. Indianapolis: The Bobbs-Merrill Company, 1931.
- HETZEL, Willard Charles, Oregon: Mental Health Laws in Brief, by Willard C. Hetzel and Stephen Thiermann. First Edition. Philadelphia: 1948.
- HETZEL, Willard Charles, The Mental Laws of Ohio; a Brief of the Statutes by Willard C. Hetzel and C. Lloyd Bailey. Philadelphia, 1949.
- HETZEL, Willard Charles, Mental Health Laws in Brief; State of Nebraska, by Willard C. Hetzel and John Oyer. Philadelphia: 1949.
- HEWARD, Lord, of Bury. Essays and Observations (Criminal Law and Insanity) 1930.

- HEYWOOD, Nathaniel Arthur, Heywood and Massey's Lunacy Practice. Sixth Edition by Donald G. Hunt, and John F. Phillips. London: Stevens and Sons, Ltd., 1939.
- HIGHMORE, Anthony, A Treatise on the Law of Idiocy and Lunacy. By A. Highmore. First American from the Last London Edition. To which is subjoined an Appendix, comprising a selection of American Cases; in which some important subjects of this treatise have been investigated and new principles settled. Exeter: N. H., G. Lamson, 1822.
- HILL, George Nesse, An Essay on the Prevention and Cure of Insanity; with observations on the rules for the detection of pretenders to madness. London: Longman, Hurst, Rees, Orme, and Brown, 1814.
- HOAG, Ernest Bryant and WILLIAMS, Edward H., Crime, Abnormal Minds and the Law. Indianapolis: The Bobbs-Merrill Co., 1923.
- HODGE, Harry, Editor, Famous Trials. First and Second Series. Penguin Books, Middlesex. 1948.
- HOLDSWORTH, W.S. , Sources and Literature of English Law. Oxford: At the Clarendon Press (1925) Impression of 1928.
- HOLLAND, Thomas Erskine, The Elements of Jurisprudence. Tenth Edition. New York: Oxford University Press, American Branch, 1906.
- HOLLANDER, Bernard, The Psychology of Misconduct, Vice and Crime. London: G. Allen Unwin, Ltd. 1922.
- HOOTON, Ernest Albert, Crime and the Man. Cambridge, Harvard, 1939.
- HOPE, Sir Thomas, Minor Practicks or A Treatise of the Scottish Law. Edinburgh: Printed by Mr. Thomas Ruddiman; and sold by Mr. Will Monro. 1726.

HUME, David, Commentaries on the Law of Scotland. Second Edition. In Two Volumes. Edinburgh: Printed for Bell and Bradfute, 1819.

HUME-WILLIAMS, Joseph William, On Unsoundness of Mind, in its Legal and Medical Considerations. London: W. Clowes and Sons, Ltd., 1890.

ILLINOIS, Laws and Statutes, Laws of Illinois Concerning Insane, Feeble-minded and Epileptics; also Index and analytical brief of laws and prescribed blank forms to be followed in the commitment, care, detention, parole, discharge, etc. of insane, feeble-minded and epileptics. Prepared by Major Wm. J. Butler by direction of Hon. Roy W. Ide, director of public welfare, State of Illinois. Springfield?, 1930?

IVES, George, M.A., A History of Penal Methods. Criminals. Witches, Lunatics. London: Stanley Paul & Co.

JACOBY, George W., The Unsound Mind and the Law. New York and London: Funk and Wagnalls Co. 1918.

JARDINE, David, Criminal Trials, Volume I. 1832.

JOHNSON, Charles Earl, The Question of Insanity and its Medico-Legal Relations Considered Upon General Principles. Raleigh, N.C.: Printed for the author by T.M. Hughes, 1869.

JONES, D. Caradog, The Social Problem Group. Poverty and Subnormality of Intelligence. Radzinowicz, L. and Turner, J.W.C., Editors. Published by the Canadian Bar Association. Editor: Cecil A. Wright, K.C., Osgoode Hall Law School. Toronto, Ontario.

JOURNAL OF CRIMINAL SCIENCE, A Collection of Papers; Issued from time to time under the auspices of the Department of Criminal Science, Faculty of Law, University of Cambridge. Radzinowicz, L. and Turner, J.W.C., Editors. London: Macmillan & Co., Vol. I, 1948. Vol. II, 1950.

JOURNAL OF PHILOSOPHICAL STUDIES, Volume I, Printed in Great Britain by Unwin Bros., Ltd. 1926.

- KAHL, Wilhelm, Geminderte Zurechnungsfähigkeit.
In Vol. I of Vergleichende. Darstellung des
Deutschen und Ausländischen Strafrechts.
Berlin: O. Liebmann, 1908.
- KAMES, Lord, Historical Law-Tracts. The Third
Edition. Edinburgh: Printed for T. Cadell,
London; and J. Bell, and W. Creech, Edinburgh.
1776.
- KEELY, T.C.S., Lunacy Accounts, 1932.
- KENNY, Courtney Stanhope, Outlines of Criminal Law
Based on Lectures Delivered in the University
of Cambridge. Seventh and Thirteenth Editions.
Cambridge: At the University Press, 1915, 1929.
- KENTUCKY, Laws, Statutes, etc. Laws and Decisions
of the Commonwealth of Kentucky pertaining to
insanity and the charitable institutions.
Louisville? 1911.
- KINBERG, Olof, Basic Problems of Criminology.
Copenhagen: Levin & Munksgaard; London: W.
Heinemann, Ltd., 1935.
- KINLOCH, The Trial of Sir Archibald Gordon-Kinloch
of Gilmerton, Bart. For the Murder of Sir
Francis Kinloch, Bart., His Brother German.
Before the High Court of Justiciary on Monday,
June 29, 1795. Edinburgh: Printed by C.
Denovan, for J. Elder, and G.G. & J. Robinson,
London, 1795.
- KOREN, John, Summaries of State Laws Relating to
the Insane, prepared originally by John Koren,
rev. by S.W. Hamilton and Roy Haber. New York:
The National Committee for Mental Hygiene, Inc.
1917.
- KOVALEVSKII, Pavel Ivanovich, Psychopathologie
Legale. Par Prof. Paul Kovalevsky. Paris:
Vigot Freres, 1903.
- KRAFFT-EBING, Richard, Die Zweifelhafte
Geisteszustände vor dem Civilrichter, für
Aerzte und Juristen. Erlangen, F. Enke, 1873.

- KRAFFT-EBING, Richard, Lehrbuch der gerichtlichen Psychopathologie mit Berücksichtigung der Gesetzgebung von Österreich, Frankreich und Deutschland. 3. umgearb. Aufl. 2. Ausg. mit einem Nachtrag: Die zweifelhaften Geisteszustände vor dem Civilrichter des deutschen Reiches nach Einführung des bürgerlichen Gesetzbuchs. Stuttgart, F. Enke, 1900.
- LANCET, Extra Numbers (No. 2) Early Mental Diseases by a Group of Well-Known Authorities. London: Wakley & Sons (1912), Ltd.
- LAWSON, John Davison, The Adjudged Cases on Insanity as a Defence to Crime. San Francisco: Bancroft-Whitney Company, 1887.
- LECKY, William, E.H., History of European Morals Vol. I. New York, Appleton, 1897.
- LEMOINE, J.M.P.J. Le Régime des Aliénés et la Liberté Individuelle.
- LEVINSON, Samuel A., Symposium on Medicolegal Problems. Under the Co-Sponsorship of the Institute of Medicine of Chicago and the Chicago Bar Association. Philadelphia, Montreal, London: J.P. Lippincott Co., 1948.
- LEY and SMITH, Trial of Ley and Smith, Edited by F.T. Jesse. Notable British Trials Series (England), 1947.
- LIDBETTER, Ernest James. The Lunacy and Mental Treatment Acts, 1890 to 1930. London: Law and Local Government Publications, Ltd., 1933.
- LITTLEJOHN, Harvey, Forensic Medicine, illustrated by photographs and descriptive cases. London: J. & A. Churchill, 1925.
- LITTLETON, Institutes of the Lawes of England. Third Edition Corrected. London: Printed by M.F.I.H. and R.T. Assignes of I. More, 1633.
- LOMBROSO, Cesare, Crime, Its Causes and Remedies. Translated by H.P. Horton, Boston: Little, 1911.

- LOVELAND, George, Pennsylvania: Mental Health Laws in Brief, by George Loveland and Stephen Thierman. First Edition, Philadelphia: 1946.
- LOWE, Louisa, The Bastilles of England; or The Lunacy Laws at Work. London: Crookenden, 1883.
- LUFF, Arthur Pearson, Text-Book of Forensic Medicine and Toxicology. London: and New York: Longmans, Green & Co., 1895,
- MACDONALD, John H.A., A Practical Treatise on the Criminal Law of Scotland. Edinburgh: William Paterson, 1867.
- MACDONALD, John H.A., A Practical Treatise on the Criminal Law of Scotland. Fifth Edition by J. Walker and D.J. Stevenson. Edinburgh: W. Green and Son, Ltd., 1948.
- MACLAURIN, Arguments and Decisions in Remarkable Cases. Before the High Court of Justiciary, and other Supreme Courts in Scotland. Edinburgh: Printed for A. Bell, Edin., and E.C. Dilly, London, 1774.
- MACKENZIE, Sir George, Pleadings in Some Remarkable Cases, Before the Supreme Courts of Scotland Since the Year 1661, to which the decisions are subjoined. Edinburgh: Printed by George Swintoun, James Glen and Thos. Brown, 1672.
- MACKENZIE, Sir George, The Institutions of the Law of Scotland. Seventh Ed., Rev. and Cor. by Alexander Bayne. Edinburgh: Printed for Wm. Brown and sold by him, 1730. Also Eighth Ed. Cor. Printed by E.& J. Robertson for L. Hunter and J. Brown, 1758.
- MACKENZIE, Sir George, The Laws and Customs of Scotland in Matters Criminal. Edinburgh, 1678.
- MANN, Edward C. A Manual of Psychological Medicine and Allied Nervous Diseases. With especial reference to the clinical features of mental diseases... and its medico-legal aspects--- Philadelphia: P. Blakiston, Son & Co., 1883.

- MANN, Edward C., A Treatise on the Medical Jurisprudence of Insanity. Albany, New York: M. Bender, 1893.
- MANN, J. Dixon and BREND, William A., Forensic Medicine and Toxicology. Sixth Edition, Rev. Throughout. London: Charles Griffin & Co. 1922.
- MARYLAND, Laws, Statutes, etc. Laws Relating to the Penal Institutions, The Board of Mental Hygiene and Care of Mental Patients. Baltimore: 1934.
- MARYLAND, Laws, Statutes, etc. Statutes Governing the Care and Supervision of Mental Patients in Maryland. Annotated Code of Maryland. Compiled by Harold J. O'Keefe. Annapolis: 1945.
- MARYLAND, Commission to Study Medico-Legal Psychiatry Report Submitted to Governor Wm. Preston Lane and the Maryland General Assembly. Dec. 28, 1948. Baltimore, 1948.
- MASSACHUSETTS, Laws, Statutes, etc. The Massachusetts Laws Relating to Insane Persons. Revised and Codified. June, 1909. Boston: Wright and Potter Printing Co., State Printers, 1909.
- MAUDSLEY, Henry, Responsibility in Mental Disease London: H.S. King, 1874.
- MEDICO-LEGAL SOCIETY, New York. Papers Read Before the Medico-Legal Society of New York, from its organization. First Series. 3d illustrated ed. New York: The Medico-Legal Journal Ass'n. 1889.
- MEDICO-LEGAL SOCIETY, New York, Memorial of the Medico-Legal Society of New York. Transmitted to the Legislature February 16, 1903. Albany, New York: The Argus Company, Printers, 1903.
- MENTAL ABNORMALITY and CRIME, Radzinowicz, L. and Turner, J.W.C., Editors. II English Studies in Criminal Science. Department of Criminal Science, Faculty of Laws, Cambridge University. Macmillan & Co., London, 1944.

- MERCIER, Crime and Criminals. Being the Jurisprudence of Crime Medical, Biological and Psychological. London: University of London Press, Ltd., 1918.
- MERCIER, Crime and Insanity, New York: Henry Holt and Co., 1911.
- MERCIER, Charles, Criminal Responsibility. Oxford at the Clarendon Press, 1905.
- MERCIER, Charles, Lunacy Law for Medical Men. London: J. & A. Churchill, 1894.
- MICHAEL, Jerome and WECHSLER, Herbert, Criminal Law and its Administration. Cases, Statutes and Commentaries. Chicago: The Foundation Press, 1940.
- MICHIGAN, Laws, Statutes, etc. Statutes. Lansing, Department of Mental Health, 1946.
- MIKELL, William E. Cases on Criminal Law Selected from Decisions of English and American Courts. American Casebook Series. Wm. Reynolds Vance, General Editor. Third Edition. St. Paul: West Publishing Company, 1933.
- MILLS, Gerald Edgell, Mills & Poyser's Lunacy Practice, by Gerald E. Mills and A.H. Ronald W. Poyser. London: Butterworth & Co. 1934.
- MITCHELL, C. Ainsworth, The Expert Witness and the Application of Science and of Art to Human Identification, Criminal Investigation, Civil Actions and History. Cambridge: W. Heffer & Sons, Ltd., 1923.
- MOREL, B.A., Traité des dégénérescences, physiques, intellectuelles et morales de l'espèce humaine, Paris: Bailliere, 1857.
- MORLAND, Nigel. The Conquest of Crime. London: Cassell and Co., Ltd., 1937.
- MUELLER, Oscar C., "The Expert". Los Angeles: Saturday Night Publishing Co., 1929.

MUNSTERBERG, Hugo, On The Witness Stand: Essays on Psychology and Crime. Garden City: Doubleday, Page and Co., 1908.

NEW YORK STATE BAR ASSOCIATION, Reports. Vol. xxxiii (1910); Vol. xxxiv (1911); Vol. xxxix (1916). Albany: The Argus Co.

NEW YORK STATE BAR ASSOCIATION, Special Committee on the Commitment and Discharge of the Criminal Insane, Report. Presented at the thirty-third annual meeting of the New York State Bar Ass'n. held at the City of Rochester, N.Y., on the 20th and 21st of January, 1910.

NEW YORK STATE BAR ASSOCIATION, Special Committee on the Commitment and Discharge of the Criminal Insane. Opinions of the Medical Experts in the form of answers to interrogatories propounded by the committee appointed by the New York State Bar Association to investigate that subject. New York?, 1913?

NEW YORK STATE CRIME COMMISSION, Special Report on Firearms Legislation and Psychiatric and Expert Testimony in Criminal Cases. Albany, N.Y.: J.B. Lyon Co., 1928.

NEW YORK STATE, Laws, statutes, etc. Mental Hygiene Law and Related Statutes. Rev. Utica, State Hospitals Press, 1947.

NEW YORK STATE Crime Commission, Special Report to the Commission on Psychiatric and Expert Testimony in Criminal Cases. Albany, N.Y.: J.B. Lyon Co., Printers, 1930.

NEW YORK STATE Law Revision Commission. Recommendations and Study Made in Relation to the Strauss Proposals. Albany, N.Y., J.B. Lyon Co., 1935.

OHIO, General Assembly. House of Representatives. Select Committee on Condition and Care of Incurable Insane, Report. 1869?

OPPENHEIMER, Benton S., A Treatise on Medical Jurisprudence. Baltimore, Md.: W. Wood & Co. 1935.

OPPENHEIMER, Heinrich, The Criminal Responsibility of Lunatics; A Study in Comparative Law, Thesis Approved for the Degree of Doctor of Laws in the University of London. London: Sweet and Maxwell, Ltd., 1909.

ORDRONAUX, John, The Proper Legal Status of the Insane and Feeble-Minded. A Paper Read Before the New York Medico-Legal Society, February 25, 1875. New York: McDivitt, Campbell & Co., 1875.

ORDRONAUX, John, Commentaries on the Lunacy Laws of New York, and on the Judicial Aspects of Insanity at Common Law and in Equity, Including Procedure, as Expounded in England and the United States. Albany, N.Y.: J.D. Parsons, 1878.

OREGON, Commission on Governmental and Administrative Reorganization. Statutory Provisions Relating to the Care and Custody of the Insane and Feeble-Minded in the State of Oregon. Prepared for the interim Commission on governmental administrative organization and the State Planning Board with the cooperation of the Works Progress Administration. Official Project Number 65-94-823. Salem, 1935.

PAILTHORPE, G.W., What We Put in Prison and in Preventive and Rescue Homes. Williams and Norgate, 1932.

PARLIAMENTARY DEBATES, House of Lords, Vo. 57, Cols. 443-476., 1924.

PARSONS, Ralph Lyman, Jury Trial of the Insane. New York, Vanden Houten & Co. Printers, 1883?

PATTERSON, Edward, Monomania as Affecting Testamentary Capacity. Read Before the Medico-Legal Society of New York, Jan. 28, 1875. New York: Printing House of W.C. Martin, 1875.

PENNEWILL, Walton, Insanity as a Defence.

PENNSYLVANIA, Board of Public Charities. To the Legislature. In the Matter of the Insane in the Prisons and Poorhouses of Pennsylvania. Philadelphia, A.C. Bryson & Co., printers, 1874. Letters of Drs. Reed, Richardson and Cook.

PENNSYLVANIA, Laws, Statutes, etc. Compendium of the Laws of Pennsylvania Relating to the Supervision, Care and Treatment, maintenance and Custody of the Insane in State Hospitals, Private Institutions, Homes, Almshouses, Jails, Penitentiaries and Elsewhere in the State of Pennsylvania. Harrisburg, Pa., E.K. Meyers, State Printers, 1889.

PENNSYLVANIA, Laws, Statutes, etc. Lunacy Law of 1883, as Amended by the Act of May 7, 1889, and as further amended by a supplement passed at the General Assembly of 1893, also an act to provide for the better protection of female insane patients in transit; etc. Committee on Lunacy. Isaac Johnson, Chairman. Harrisburgh, Pa.: Harrisburg Publishing Co., State Printers, 1907.

PENNSYLVANIA, Laws, Statutes, etc. The Lunacy Law, with rules and regulations of the Committee on Lunacy of the Board of Public Charities. Rev. Ed. Harrisburg, Pa.: C.E. Aughinbaugh, 1911.

PETERSON, Frederick, Legal Medicine and Toxicology by Many Specialists, edited by Frederick Peterson, Walter S. Haines and Ralph W. Webster. Second Edition. Philadelphia and London: W.B. Saunders Co., 1923.

PHILLIPS, Charles Palmer, The Law Concerning Lunatics, Idiots, and Persons of Unsound Mind. London: Butterworths, 1858.

PHILLIPPS, Samuel March, State Trials or A Collection of the Most Interesting Trials Prior to the Revolution of 1688. Vols. I and II. London: W. Walker, 1826.

PIETRUSKY, Friedrich, Gerichtliche medizin, von prof. dr. med. F. Pietrusky. Gerichliche psychiatrie, von prof. dr. med. Max de Crinis 2. und 3. durchgesehene und erweiterte aufl. Berlin: C. Heymann, 1943.

PINEL, Phillippe, A Treatise on Insanity In Which are Contained the Principles of a New and More Practical Nosology of Maniacal Disorders Than Has Yet Been Offered to the Public. Translated from the French. England; Sheffield, 1806.

PITCAIRN, Robert, Criminal Trials in Scotland from A.D. 1488 to A.D. 1624. Embracing the Entire Reigns of James IV & V, Mary Queen of Scots, and James VI. Vol. First, Part First, 1488-1564; Vol. First, Part Second, 1464-1596; Vol. Second, 1596-1609; Vol. Third, 1609-1624. Edinburgh: Wm. Tait and Longman, Rees, Orme, Brown, Green & Longman, London. 1833.

PLAUT, Paul, Die zeugenaussagen jugendlicher psychopathen. Ihre forensische bedeutung, von dr. med. et phil. Paul Plaut. Struttgart: F. Enke, 1928.

POORE, Vivian, Goerge, A Treatise on Medical Jurisprudence. Based on Lectures Delivered at University College, London. London: John Murray, 1901.

POPE, Henry Randall, A Treatise on the Law and Practice of Lunacy, comprising as well the care and custody of lunatics by the Crown as the relation of insanity to the civil and criminal law, and the law of evidence in regard to insanity: ...By. H. Pope.. Second Ed. by J.H. Boome ..and V. de S. Fowke. London: Sweet and Maxwell, Ltd., 1892.

POWELL, N.J., A Statistical Analysis of the Diagnosis of Normality, Psychopathy and Feeble-mindedness in a Prison Population, New York: 1936.

QUINCY, John, Lexicon Physico-Medicum or A New Medicinal Dictionary. Third Edition. London: J. Osborn and T. Longman, 1726.

RAECKE, Julius, Grundriss der Psychiatrie, von Hans W. Grubbe. 14 verb. Aufl. der Psychiatrischen Diagnostik von Julius Raecke. Munchen: J. F. Bergmann, 1947.

- RAY, Isaac, Contributions to Mental Pathology, Boston: Little, Brown and Company, 1873.
- RAY, Isaac, A Treatise on the Medical Jurisprudence of Insanity. Edinburgh: Thos. Clark, 1839.
- RAYNER, J.L. and CROOK, G.T. (Collators and Editors) The Complete Newgate Calendar. In Five Volumes. London: Privately Printed for the Navarre Society, Ltd., 1926.
- RECHTSWISSENSCHAFT, Ursachenbegriff und Neurosenfrage; juristische Beiträge zur Angleichung ärztlicher und rechtlicher Auffassungen über die Entschädigungspflicht bei Neurosen, von Dr. Arendts (et. al.) Mit einer Einleitung und einem Schlusswort des Herausgebers. Leipzig: G. Thieme, 1941.
- RECKLESS, Walter C., Criminal Behavior. First Edition, Fifth Impression. London: McGraw-Hill Book Co., Inc., 1940.
- REESE, John James, Text-Book of Medical Jurisprudence and Toxicology. Eighth Edition, rev. by D.J. McCarthy. Philadelphia: P. Blackiston's Son & Co., 1911.
- RENTON, Alexander Wood, The Law of and Practice in Lunacy, with the Lunacy Acts 1890-91.... .The Rules in Macnaughton's case... and a collection of forms, precedents, etc. Edinburgh: W. Green & Sons, 1896.
- ROBERTSON, William George A., Manual of Medical Jurisprudence and Toxicology. Fourth Edition, with frontispiece in colour and 26 illustrations in the text. London: A. & C. Black, Ltd. 1921.
- ROGERS, Abner, Jr., Report of the Trial of Abner Rogers, Jr. Indicted for the Murder of Charles Lincoln, Jr. Before the Supreme Judicial Court of Mass. Holden at Boston on Tuesday, Jan. 30, 1844. Boston: Charles C. Little & James Brown, 1844.

- RUSCHE, George and KIRCHEIMER, Otto, Punishment and Social Structure. New York: Columbia Univ. Press, 1939.
- RUSSELL, Sir William Oldnall, A Treatise on Crimes and Misdemeanors. Seventh Edition by William Feilden Craies and Leonard William Kershaw, with Canadian Notes by Alfred B. Morine, K.C., London: Stevens and Sons, Ltd. Toronto: Canada Law Book Co., Philadelphia: Cromarty Law Book Company, 1910.
- SABBEN, James Thompson, Handbook of Law and Lunacy; or, The Medical Practitioner's Complete Guide in All Matters Relating to Lunacy Practice. By James T. Sabben and J.H. Balfour Browne. London: J. & A. Churchill, 1872.
- SALEILLES, Raymond, The Individualization of Punishment. Translated by R.S. Jastrow. Boston: Little, 1911.
- SAMPSON, Marmaduke Blake, Criminal Jurisprudence Considered in Relation to Cerebral Organization. Second Edition. With Additions. London: S. Highley, 1843.
- SANDER, Wilhelm, Die beziehungen zwischen geistesstörung und verbrechen. Nach beobachtungen in der Irrenanstalt Dalldorf, von dr. W. Sander, dirigirender arzt der Irren-siechen-anstalt und dr. A. Richter, l. assistenzarzt der Irren-anstalt. Berlin: Fischer, 1886.
- SAVAGE, Sir G. and GOODALL, E., Insanity and Allied Neuroses, 1907.
- SCHEFFEL, Carl, Medical Jurisprudence. Philadelphia: P. Blakiston's Son & Co., Inc., 1931.
- SCOTLAND, Committee on the Scottish Lunacy and Mental Deficiency Laws. Report of the Committee on the Scottish Lunacy and Mental Deficiency Laws. Edinburgh: H.M. Stationery Office, 1946.

- SHELFORD, Leonard, A Practical Treatise on the Law Concerning Lunatics, Idiots, and Persons of Unsound Mind. With an appendix of the Statutes of England, Ireland, and Scotland, relating to such persons; and precedents and bills of costs. London; 1833. Philadelphia: J.S. Littell, 1833.
- SIGERSON, George, The Law and the Lunatic. A Paper Read Before the Statistical and Social Inquiry Society of Ireland, 19th January, 1886. Dublin: Hodges, Figgis & Co.; London: Simpkin, Marshall & Co., 1886.
- SIMPSON, Keith, Forensic Medicine. London: Edward Arnold & Co., 1947.
- SINGER, H. Douglas, The Deranged or Defective Delinquents. The Illinois Crime Survey, Chap. XV. Chicago: Illinois Association for Criminal Justice in Cooperation with the Chicago Crime Commission, 1929.
- SINGER and KROHN, Insanity and Law, 1924.
- SMITH, Frederic John, London Hospital Lectures On Forensic Medicine and Toxicology. Third Edition Revised by George Jones. London: H.K. Lewis & Co., Ltd. 1929.
- SMITH, Horace Edwin, The Plea of Insanity. Albany: The Albany Institute, New York, 1882.
- SMITH, Hubert Winston, Scientific Proof and Relations of Law and Medicine (First and Second Series). A Symposium Series on Law-Science Problems with particular reference to law-medicine problems. Editor-in-Chief, Hubert Winston Smith. Urbana, Illinois (University of Illinois), 1946.
- SMITH, Sir Sydney and COOK, W.G.H., Taylor's Principles and Practice of Medical Jurisprudence. Chemical Aspects by C.P. Stewart. Tenth Edition Vols. I and II. London: J. & A. Churchill, Ltd., 1948.
- SMITH, Sir Sydney and FIDDES, Frederick S., Forensic Medicine. Ninth Edition. London: J. & A. Churchill, Ltd., 1949.

- SMITH, W. Ramsay, Medical Jurisprudence From the Judicial Standpoint. London: Stevens & Sons, Ltd., 1913.
- SMOOT, George A., The Law of Insanity. Kansas City: Vernon Law Book Co., 1929.
- SPITZKA, Edward Charles, Regicides; Sane and Insane. New York, 1903.
- STAIR, James, Viscount of, The Institutions of the Law of Scotland. Second Edition, Revised and Corrected and Much Enlarged. With alphabetical index to the whole work. Edinburgh: Printed by the Heir of Andrew Anderson, Printer to Their Most Excellent Majesties, 1693.
- STANDFORD (or Staundeford, Staunford, Stamford, Staundeford), Sir William, An Exposition of the Kinges Prerogative Collected out of the Great Abridgement of Justice Fitzherbert, London:, 1567.
- STARKEY, Marion L., The Devil in Massachusetts. A Modern Inquiry into the Salem Witch Trials. New York: Alfred A. Knopf, 1950.
- STATE TRIALS and Proceedings, for High Treason, and other Crimes and Misdemeanors; A Complete Collection from the Reign of King Richard II to the Reign of King George II. In Six Vols. Third Edition-with additions. London, 1742.
- STATE TRIALS, Political and Social, H.L. Stephen, Editor. In Four Volumes. London: Duckworth & Co., 1899.
- STATUTORY RULES and Orders, Under the Mental Deficiency and Lunacy (Scotland) Act, 1913.
- STEPHEN, Sir James Fitzjames, A Digest of the Criminal Law (Crimes and Punishments). Fifth Edition by Sir H. Stephen; London and New York: The Macmillan Co., 1894. Sixth Edition by Sir Herbert Stephen and Harry Lushington Stephen; London and New York: The Macmillan Co., 1904.

- STEPHEN, Sir James Fitzjames, A General View of the Criminal Law of England. London and Cambridge: Macmillan & Co., 1863.
- STEPHEN, Sir James Fitzjames, A History of the Criminal Law of England. In Three Volumes. London: Macmillan & Co., 1883.
- STOCK, John Shapland, A Practical Treatise on the Law of Non Compos Mentis, or Persons of Unsound Mind. Philadelphia: J.S. Littell; New York: Halsted and Voorhies, 1839.
- STUDY ON PUNISHMENT, L. Radzinowicz and J.W.C. Turner, Editors. English Studies in Criminal Science. Pamphlet Series. Published by the Canadian Bar Ass'n. Editor: Cecil A. Wright, K.C., Osgoode Hall Law School, Toronto, Ontario.
- SULLIVAN, W.C., Crime and Insanity. London: Edward Arnold & Co., 1924.
- SWISS CRIMINAL LAW, Replies to the Questionnaire Framed by the Department of Criminal Science, Cambridge, and leading principles of the Swiss Criminal Code by Dr. Iur Helene Pfander. Edited by L. Radzinowicz and J.W.C. Turner. Published by The Canadian Bar Association. Editor: Cecil A. Wright, K.C. Osgoode Hall Law School, Toronto, Ontario.
- TAYLOR, Alfred Swaine, Taylor's Principles and Practice of Medical Jurisprudence. Tenth Edition Edited by Sydney Smith with a complete revision of the Legal Aspects by W.G.H. Cook and of the Chemical Aspects by C.P. Stewart. In Two Volumes. London: J. & A. Churchill, 1948.
- THEOBALD, Sir Henry S., The Law Relating to Lunacy. London: Stevens & Sons, Ltd., 1924.
- THOINOT, Leon Henri, Medicolegal Aspects of Moral Offenses. Translated from the original French and enlarged by Arthur W. Weyssse.. Only authorized translation in English. Philadelphia: F.A. Davis Co., 1916.

- TIDY, Charles Meymott, Legal Medicine. Parts I and II. London: Smith, Elder & Co., 1882.
- TOWNSEND, William C. Modern State Trials. Volumes I and II. London: Longman, Brown, Green & Longmans, 1850.
- TRAIN, Arthur, The Prisoner at the Bar. New York: Charles Scribner's Sons, 1908.
- TREDGOLD, A.F., Mental Deficiency (Amentia). Fourth Edition Revised and Enlarged. London: Bailliere, Tindall and Cox, 1922.
- TRUE, Ronald, The Trial of Ronald True, Edited by D. Carswell. Notable British Trials Series (England), 1922.
- TUKE, Daniel Hack, Chapters on the History of the Insane in the British Isles. London: K. Paul, Trench & Co., 1882.
- UNITED STATES, Congress. Hearings before... the Committee on the Judiciary, House of Representatives, Seventy-ninth Congress, first-second session. Washington: U.S. Gov't Printing Office. 1945-1946.
- UNITED STATES, Congress. Senate. Committee on the Judiciary. Care and Custody of Insane Persons Charged with Federal Offenses. Hearing before a Subcommittee of the Committee on the Judiciary, United States Senate, Eightieth Congress, second session, on S. 850, a Bill to Provide for the Care and Custody of Insane Persons Charged with or Convicted of Offenses against the United States and for other purposes. Mar. 3, 1948. Washington, U.S. Gov't Printing Office, 1948.
- VON BAEYER, Walter, Zur Genealogischer Psychopathische bei Schwindler und Lungner. Leipzig: Thieme.
- WARMARK, pseud., Guilty But Insane- A Broadmoor Autobiography. Chapman and Hall, 1931.

- WARNER, Sam B., Modern Trends in the American Law of Arrests. English Studies in Criminal Science Pamphlet Series, Edited by L. Radzinowicz and J.W.C. Turner. Published by The Canadian Bar Association. Editor: Cecil A. Wright, K.C., Osgoode Hall Law School, Toronto, Ontario.
- WATSON, George M.A., Bell's Dictionary and Digest of the Law of Scotland. Seventh Edition. Edinburgh: Bell and Bradfute. London: Butterworths, 1890.
- WATT, Francis, The Law's Lumber Room. London: John Lane. Chicago, Ill.: McClurg & Co. 1896. Also Second Series, 1898.
- WEIHOFEN, Henry, Insanity as a Defense in Criminal Law. New York: Commonwealth Fund, 1933.
- WERTHAM, Frederic, The Show of Violence. New York: Doubleday & Co., Inc., 1949.
- WERTHAM, Frederic, Dark Legend, New York: Doubleday & Co., Inc., 1949.
- WETMORE, Edmund, Statutory Law of New York Regarding the Insane. Utica, New York: Roberts, Printer, 1867.
- WHARTON, Francis, A Monograph on Mental Unsoundness. Philadelphia: Kay and Brother, 1855.
- WHARTON, Francis, A Treatise on Criminal Law. Tenth Edition, revised and enlarged. Additions by William Draper Lewis; Philadelphia: Kay and Brother, 1896. Twelfth Edition Published under the Title, Wharton's Criminal Law, with large additions by J.C. Ruppenthall. Rochester, New York: The Lawyers Cooperative Publishing Co., 1932.
- WHARTON and STILLÉ, Medical Jurisprudence. Fifth Edition. New York: Lloyd & Bowlby, 1905.
- WHITE, W.A., Crime and Criminals. New York: Farrar & Rinehart, 1933.

- WICKERSHAM, G.W., National Commission on Law Observance and Enforcement, Report on Causes of Crime. Washington, D.C.: U.S. Government Printing Office, 1931.
- WIGMORE, John Henry, A Treatise on the Anglo-American System of Evidence in Trials at Common Law. Second Edition. Boston: Little, Brown and Company, 1923.
- WIGMORE, John Henry, Compiler, The Principles of Judicial Proof. Boston: Little, Brown & Co., 1913. Second Edition, entirely revised and rewritten, Published under the Title, The Principles of Judicial Proof; or, the Process of Proof as Given by Logic, Psychology and General Experience and Illustrated in Judicial Trials, 1931.
- WILLIAMS, Frankwood Earl, Legislation for the Insane in Massachusetts, with particular reference to the voluntary and temporary care laws, by Frankwood E. Williams, M.D., Executive Secretary, Massachusetts Society for Mental Hygiene. Boston: Smithsonian Press, 1915.
- WINSLOW, Forbes Benignus, The Plea of Insanity, in Criminal Cases. Philadelphia: J.S. Littell, 1843.
- WINSLOW, Forbes, Benignus, Lettsomian Lectures on Insanity. London: J. Churchill, 1854.
- WINSLOW, Lyttleton Stewart Forbes, Recollections of Forty Years; Being an Account at First Hand of Some Famous Criminal Lunacy Cases, English and American; together with facsimile letters, notes, and other data concerning them. London: J. Cuseley, Ltd., 1910.
- WITTHAUS, Rudolph August, Medical Jurisprudence, Forensic Medicine and Toxicology, by R.A. Witthaus with the collaboration of August Becker, Charles A. Boston; Hon. Goodwin Brown and others. Second Edition. New York: W. Wood & Co., 1906-11.

WOOD, Horatio, Insanity in its Relation to Law.
An Address Delivered Before the Medical Society
of the State of Pennsylvania, June, 1888.
Philadelphia: W.J. Dornan, Printer, 1888.

WOOD, William, Remarks on the Plea of Insanity,
and on the Management of Criminal Lunatics.
Second Edition. London: Brown, Green, and
Longmans, 1852.

WRIGHT, Thomas Lee, Responsibility Restricted by
Insane Delusion. Cincinnati, Ohio, 1879.

WROTTESELEY, Frederic John, The Examination of
Witnesses in Court. London: Sweet and Maxwell,
Ltd., 1919.

ZILBOORG, Gregory, in Collaboration with HENRY, Geo.
A History of Medical Psychology. New York:
W.W. Morton & Co., Inc.

BIBLIOGRAPHY

APPENDIX C : PERIODICALS

ADLER, Herman, "Psychiatry as Applied to Criminology in the United States". 24 Journal of Criminal Law and Criminology 50 (1933).

ALEXANDER, Franz, "Mental Hygiene and Crime" (Germ.) Imago, Volume 17 (1931).

ALKERS, G.M., "Plea of Insanity--Statutory Provision for Psychiatric Observation". Lambert v. State of Arkansas. 211 SW 2nd. 431. 1 Alabama Law Review 88-91. (Fall, 1948).

ALLEN, J.D., "Tests of Insanity in Criminal Cases in Kentucky". 27 Kentucky Law Journal 443-7. (May, 1939).

ALLEN, R.M., HAINES, W.H., and KENNEDY, F., "Psychiatric Study of William Heirens-Discussion". 39 Journal of Criminal Law and Criminology 49-51. (May-June, 1948).

ANDRIOLA, J.P., "Some Suggestions for Treating the Defective Delinquent". 31 Journal of Criminal Law and Criminology 297-302. (September-October, 1940).

ANNUAL REPORT of the BOARD OF CONTROL, 102 Justice of the Peace 858 (December 31, 1938); 103 Justice of the Peace 808-9 (December 23, 1939); 110 Justice of the Peace 577-9 (November 30, 1946).

ARGOW, W.W., "Harmonizing the Delinquent Experts". 30 Journal of Criminal Law and Criminology 204-10 (July- August, 1939).

ARIEFF, A.J. and ROTMAN, D.B., "Psychopathic Personality- Some Social and Psychiatric Aspects". 39 Journal of Criminal Law and Criminology 158-66 (July-August, 1948).

- ASCHAFFENBURG, G., "Psychiatry and Criminal Law".
32 Journal of Criminal Law and Criminology
3-14. (May-June, 1941).
- BABB, Henry B., "The Verbal Inebriate and Lunatic
Fringe in Penology". 8 Dicta 3. (September, 1931)
- BALL, Jau Don, and KIDD, A.M., "The Relation of Law
and Medicine in Mental Disease". 9 California
Law Review 1 (1920); 100 (1921); 276 (1921).
- BALLANTINE, Henry, "Criminal Responsibility of the
Insane and Feebleminded". 9 Journal of Criminal
Law and Criminology. 485. (1919).
- BANDY, R.Y., Jr., "Effects of Oklahoma Mental
Health Law" 1 Oklahoma Law Review 189-98.
(August, 1948).
- BARNES, H., "McNaghten Rules, a Century of the".
8 Cambridge Law Journal 300-21. (1944).
- BARRY, J.V., "Insanity in the Criminal Law in
Australia". Introductory note by Radzinowicz
and Turner. 21 Canada Bar Review 427-39.
(June, 1943). 61 South African Law Journal
299-313. (August, 1944).
- BARRY, J.V., "The Sodeman Case and the Defence of
Insanity". 10 Australia Law Journal 3. (1936).
- BENDER, Lauretta, KEISER, Sylvan and SCHILDER, Paul,
"Studies in Agressiveness". 18 Genet. Psychol.
Monogr. Nos. 5-6. (October-December, 1936).
- BENTON, W.C., "Hocus Pocus-Psycho-Soakus". 3 Lawyer
22-3. (November, 1939).

BERGLER, E., "Suicide: Psychoanalytic and Medico-legal Aspects". 8 Louisiana Law Review 504-33. (May, 1948).

BERKELEY-HILL, Owen A.R., "Psychiatry and the Law". 51 California Law Journal 9. (1930).

BERLIEN, I.C., "Rehabilitation Center; Psychiatry and Group Therapy". 36 Journal of Criminal Law and Criminology 249-55. (November-December, 1945).

BINGHAM, Anna, "Determinants of Sex Delinquency in Adolescent Girls Based on Intensive Studies of 500 Cases". 13 Journal of Criminal Law and Criminology. (February, 1923).

BIRKETT, Rt. Hon. Mr. Justice, "Criminal Justice: Problems of Punishment". The Eighth Clarke Hall Lecture. (Pamphlet).

BISBEE, G.A., "The Sanctions of the Soviets". 4 Southern California Law Review 358 (1931).

BOURKE, J.P., "Insanity, Drunkenness and Crime". 20 Australia Law Journal 418-23. (March, 1947).

BOWMAN, Karl M., "Challenge of the Sex Offenders-Psychiatric Aspects of the Problem". 22 Mental Hygiene 10-20. (1938).

BOYNTON, C., "Insanity and its Effect in Different States of Criminal Trials". 18 Notre Dame Law 358-70. (May, 1943).

BRAIN TESTS Used as Evidence in Murder. Daily Telegraph and Morning Post, March 17, 18, 1943. 11 Medico-Legal and Criminological Review 97. (1943).

- BRAND, C.E., "Issue of 'Insanity' in the Administration of Military Justice". 32 Journal of Criminal Law and Criminology 331-9. (September-October, 1941).
- BRAND, James T., "The Insanity Defense". 9 Oregon Law Review 309. (1930).
- BRANHAM, V.C., "The Reconciliation of the Legal and Psychiatric Viewpoints of Delinquency" 17 Journal of Criminal Law and Criminology 173. (1926).
- BRIGGS, L. Vernon, "Medico-Legal Insanity and the Hypothetical Question". 14 Journal of Criminal Law and Criminology 62. (1923).
- BROMBERG, W. and THOMPSON, C.B., "Relation of Psychosis, Mental Defect and Personality to Crime". 28 Journal of Criminal Law and Criminology 70-89. (May-June, 1937).
- BROWN, B.R., "Insanity as a Defense in Criminal Law and Semi-Responsibility". (Fisher v. U.S. 66 Sup. Ct. 1318). Wisconsin Law Review 109-14. (January, 1947).
- BROWN, J.C., "Insanity- Danger to Public from Defendant's Discharge- Opinion Evidence". (Rice v. State of Oklahoma 158 Pac. 2d. 912). 17 Oklahoma Bar Association Journal 261-2. (February 23, 1946).
- BURROW, Trigant, "Crime and the Social Reaction to Right and Wrong". 24 Journal of Criminal Law and Criminology No. 2. (November-December, 1933)
- BURT, C., "Psychoanalysis"-English Studies in Criminal Science. Preface. 22 Canada Bar Review 19-61. (January, 1944).

- BYCHOWSKI, G. and CURRAN, F.J., "Medico-Legal Testimony - Current Problems in". 37 Journal of Criminal Law and Criminology 16-36. (May-June, 1946).
- CALLAHAN, R.J., Jr., "Insanity in Criminal Actions". 21 Notre Dame Law 335-41. (June, 1946).
- CAMPBELL, C. Macfie, "Crime and Punishment: From the Point of View of the Psychopathologist". 19 Journal of Criminal Law and Criminology 244. (1928).
- CARDOZA, Benjamin, "What Medicine Can Do For Law". Bulletin, New York Academy of Medicine. (July, 1929).
- CARE Of Mentally Defective Children. 111 Justice of the Peace 54. (January 25, 1947).
- CASON, H., and PESCOR, M.J., "Recidivists and Non-Recidivists Among Psychopathic Federal Offenders; a Comparative Study". 37 Journal of Criminal Law and Criminology 236-8. (September-October, 1946).
- CASSITY, John H., "Personality Study of 200 Murderers". 2 Journal of Criminal Psychopathology 296-304. (1941).
- CHRISTIE, T., "Criminal Lunatics and the Crime of Arson". 1 British Medical Journal 162. (1930).
- CLAIM for False Certification of Insanity. 130 Journal of the American Medical Association 968. (April 6, 1946). Reviewed in 14 Medico-Legal and Criminological Review 139 (1946).

CLARK, L. Pierce, "A Critique of the Legal, Economic and Social Status of the Epileptic". 17 Journal of Criminal Law and Criminology 218. (1926).

CLARK, L. Pierce, "Psychologic Study of Stealing in Delinquents". 1 Arch. Neurol. & Psychiat. 535. (1919).

COHANE, L.S., "Psychiatry and the Criminal Law". 1 American Journal of Medical Jurisprudence 152-6. (November, 1938).

COHEN, L.H. and COFFIN, T.E., "Pattern of Murder in Insanity; a Criterion of the Murderer's Abnormality". 37 Journal of Criminal Law and Criminology 262-87. (November-December, 1946).

COMMUNICATIVE INSANITY, (Folie a deux). Daily Telegraph and Morning Post, June 16, 1944. Reviewed in 12 Medico-Legal and Criminological Review 162.

CONN, J.H., "Psychiatric Treatment of Certain Chronic Offenders". 32 Journal of Criminal Law and Criminology 631-5. (March-April, 1942).

CONSTITUTIONAL Law- Due Process- Retention of Mental Defective Delinquent after Expiration of Sentence. (J.E.P.) People ex rel Charles Morriale v. Vernon Branham (N.Y.) 52 N E 2nd. 881. 18 St. John's Law Review 120-2. (April, 1944).

CONTI, Ugo, "The Concept of Punishment". 13 Illinois Law Review 234. (1918).

COOMBS, W.P., "Insanity as a Defense in Criminal Law of Montana". 1 Montana Law Review 69-74. (Spring, 1940).

COON, G.P., "Psychiatry for the Lawyer - Requisites for a Sound Mental Examination". 26 Boston University Law Review 272-89. (April, 1946).

COON, G.P., "Psychiatry for the Lawyer - Common Psychiatric States Not Due to Psychosis". 31 Cornell Law Quarterly 466-90. (June, 1946).

COON, G.P., "Psychiatry and the Lawyer; the Principal Psychoses". 31 Cornell Law Quarterly 327-62. (March, 1946).

CRIME and Insanity. 107 Justice of the Peace 554-5. (November 20, 1943).

CRIMINAL Law, Insanity, addendum. 14 New York University Law Quarterly 518-19. (May, 1937).

CRIMINAL Law, Sex Offenders, Civil Commitment for Psychiatric Treatment. 39 Columbia Law Review 534-44. (March, 1939).

CRIMINAL Law and Sex Offenders: A Report of the Joint Committee on Psychiatry and the Law Appointed by the British Medical Association and The Magistrates' Association. Pamphlet Published by the British Medical Association, London, 1949.

CROTTY, Homer D., "The History of Insanity as a Defence to Crime in English Criminal Law". 12 California Law Review 105. (1924).

CROUNSE, D. "Dementia Praecox and Crime". 9 Mental Hygiene. (January, 1925).

CURTI, Margaret W., "The New Lombrosianism". 17 Journal of Criminal Law and Criminology 246. (1926).

DAVIES, D.S., "Irresistible Impulse in English Law".
17 Canada Bar Review 147-65. (March, 1939).

DAVIS, C.M., "Critique of the Test of Insanity in
Criminal Cases in Kentucky". 32 Kentucky Law
Journal 86-90. (November, 1943).

DAVIS, J.V., "Burden of Proof on a Plea of Insanity
in Criminal Cases". (Hoggatt v. State of
Oklahoma 94 Pac. 2d. 264.) 2 Georgia Bar
Journal 66-7. (February, 1940).

DEFENSE of Insanity at the Time of the Act in
Criminal Cases in Iowa. 32 Iowa Law Review
714-32. (May, 1947).

DEFENSES -- Presumption of Incapacity of Infants as
Applied to Adult "Mental Infants". State v.
Schabert (Minn.) 24 NW 2d. 846. 31 Minnesota
Law Review 375-6. (March, 1947).

DELEHANTY, T.E., "The Insane Irresistible Impulse
Doctrine". 4 Peabody Law Review 1-8, 28-35.
(April-June, 1939).

DESSION, G.H., "Psychiatry and the Conditioning
of Criminal Justice". 47 Yale Law Journal
319-40. (January, 1938).

DESSION, G.H., "The Mentally Ill Offender in Federal
Criminal Law and Administration". 53 Yale Law
Journal 684-99. (September, 1944).

DIVORCE and Insanity: Contempt of Court. ii Lancet
215 (August 18, 1945). Reviewed in 13 Medico-
Legal and Criminological Review 214. (1945).

- DIVORCE Law and Continuous Mental Treatment.
Safford v. Safford. i Lancet, 480, 768. (April 8 and June 10, 1944). Reviewed in 12 Medico-Legal and Criminological Review 161 (1944).
- DIXON, Henry Hadley, "Psychiatric Angles of Criminal Behaviour". 14 Oregon Law Review (1935).
- DOLL, Edgar A., "The Comparative Intelligence of Prisoners". 11 Journal of Criminal Law and Criminology 191. (1920).
- DOYLE, J.J., "Criminal Liability of Insane Persons in Indiana- Proof and Tests". 21 Notre Dame Law 193-6. (March, 1946).
- DRAPER, P.A., "Mental Abnormality in Relation to Crime". 2 American Journal of Medical Jurisprudence 161-5. (March-April, 1939).
- EAST, Sir W.N., "Alcoholism and Crime in Relation to Manic Depressive Disorder". 1 Lancet 161-63. (1936).
- EAST, Sir W.N., "Insanity in Law and Medicine - Problems in Forensic Psychiatry". 65 Law Journal 143. (1928).
- EAST, Sir W.N., "Moral Imbecility". 2 Lancet 1117. (1921).
- EAST, Sir W.N., "Murder from the Viewpoint of the Psychiatrist". 3 Medico-Legal and Criminological Review 61. (1935).
- EAST, Sir W.N., "Review of S.K. Foulkes' "Psychoanalysis and Crime". 13 Medico-Legal and Criminological Review 98. (1945).

- EIRE: The Mental Treatment Bill, 1944. 78 Ireland Law Tribunal 311-13, 317-19. (December 16-23, 1944).
- ELIASBERG, W., "New Theory of the Perpetrator and the Duties of the Psychiatric Expert". 30 Journal of Criminal Law and Criminology 498-510. (November-December, 1939).
- ELIASBERG, W., "Psychiatric and Psychological Opinions in Courts". 39 Journal of Criminal Law and Criminology 152-7. (July-August, 1948).
- ELLWOOD, Charles A., "Lombroso's Theory of Crime". 2 Journal of Criminal Law and Criminology 716. (1912).
- EMERGENCY Arrangements. Transfer of Persons of Unsound Mind and Mental Defectives. 103 Justice of the Peace 651-2. (October 7, 1939).
- ENGLISH Studies in Criminal Science, Pamphlet No. 6. Department of Criminal Science, University of Cambridge. Edited by L. Radzinowicz and J.W. Turner. Squire Law Library, Cambridge.
- ERICKSON, Milton H., "The Application of the Precsay X-O Tests to Delinquents". 47 Medico-Legal Journal 75. (1930).
- EVERSHED, Rt. Hon. Raymond, "The Court of Appeal in England". University of London. The Athlone Press. (1950). Pamphlet.
- FARRAR, C.B., "Criteria of Responsibility". 21 Journal of Criminal Law and Criminology 438. (1930).

FELD, V., "Pattern of Murder in Insanity; a Criterion of the Murderer's Abnormality". 20 Southern California Law Review 95-9. (December, 1946).

FIRST Degree Murder -- Mental Deficiency Not to be Considered by Jury if Defendant's Legal Irresponsibility is Not Shown. Fisher v. U.S., 66 Sup. Ct. 1318. 20 Temple Law Quarterly 155-6. (July, 1946).

FOULKES, S.K., "Psychoanalysis and Crime". 22 Canada Bar Review. (January, 1944).

FOX, A.N., "Heredity and Crime". 36 Journal of Criminal Law and Criminology 11-16. (May-June, 1945).

FREEDMAN, H.L., "Psychiatric Clinical Service for Penology; Comments on Recent Guidance Center Trends". 36 Journal of Criminal Law and Criminology 326-30. (January-February, 1946).

FREEDMAN, H.L., "Role of Psychiatry in Prison". 29 Journal of Criminal Law and Criminology 353-61. (September-October, 1938).

FREUD, Sigmund, "Psychoanalysis and the Ascertain-
ing of Truth in Courts of Law, Collected Papers"
Vol. 2, London, Hogarth Press, p. 13. (1933).

FRY, Margery, "The Ancestral Child". The Fifth
Clarke Hall Lecture. Pamphlet.

GIBBS, Fred a., BLOOMBERG, Wilfred and BAGCHI, B.K.,
"Electroencephalographic Study of Criminals".
102 American Journal of Psychiatry 294. (1945).

- GLUECK, Bernard, "A Contribution to the Catamnestic Study of the Juvenile Offender". 3 Journal of Criminal Law and Criminology 220. (1912).
- GLUECK, Sheldon, "Ethics, Psychology and the Criminal Responsibility of the Insane". 14 Journal of Criminal Law and Criminology 208. (1923).
- GLUECK, Sheldon, "Psychiatric Examination of Persons Accused of Crime". 11 Mental Hygiene 287. (1927) 36 Yale Law Journal 632. (1927).
- GLUECK, Sheldon, "Psychiatry and the Criminal Law". 14 Virginia Law Review 155. (1928).
- GLUECK, Sheldon, "State Legislation Providing for the Mental Examination of Persons Accused of Crimes". 14 Journal of Criminal Law and Criminology 573. (1924).
- GLUECK, Sheldon and GLUECK, Eleanor T., "Predictability in the Administration of Criminal Justice". 42 Harvard Law Review 297. (1929).
- GORDON, Alfred, "Amnesia from a Medicolegal Standpoint". 19 Journal of Criminal Law and Criminology 563. (1929).
- GORDON, Alfred, "Morbid Impulses from the Medico-Legal Standpoint". 8 Journal of Criminal Law and Criminology 829. (1918).
- GRAMLING, Gregory, "Insanity in Criminal Cases in Wisconsin". 17 Marquette Law Review 190. (1933).
- GREEN, E.H., "Insanity as a Defence in Criminal Cases". 17 Mississippi Law Journal 160-3. (October, 1945).

HALL, J., "Mental Disease and Criminal Responsibility". 45 Columbia Law Review 677-718. (September, 1945).

HARNO, A.J., "Intent in Criminal Conspiracy". 89 Pennsylvania Law Review No. 5.

HARRIS, S.W., "Probation and Other Social Work of the Courts". The Third Clarke Hall Lecture. Pamphlet.

HAUER, A.J., "Insanity - Irresistible Impulse". Simecek v. State of Wisconsin 10 NW 2d. 161. 28 Marquette Law Review 47-9. (Winter, 1944).

HEALY, W., "Mental Factors in Crime". 12 Mental Hygiene 761-767. (1928).

HEALY, W., "The Problem of Causation of Criminality". 2 Journal of Criminal Law and Criminology 849. (1912).

HEALY, W., "Psychoanalysis of Older Offenders". 4 American Journal of Orthopsychiatry. (January, 1934).

HENDERSON, Sir D.K., PATRIE, A.A. and DURRAN, D. "A Symposium on Psychopathic States". 88 Mental Science 485. (1942).

HEWART, Lord Gordon, "Insanity and Crime". 64 The Law Journal 383. (1927).

HEWART, Rt. Hon. Lord, of Bury, "The Treatment of the Young Offender". The Second Clarke Hall Lecture. Pamphlet.

HOEDMAKER, E.D., "Irresistible Impulse as a Defense in Criminal Law; a Criticism Based on Modern Psychiatric Concepts". 23 Washington Law Review 1-7. (February, 1948).

HOFFDING, Harald, "The State's Authority to Punish Crime". 2 Journal of Criminal Law and Criminology 691. (1912).

HOVEY, H.B., "Behavior Characteristic of Antisocial Recidivists". 32 Journal of Criminal Law and Criminology 636-42. (March-April, 1942).

HOWARD, F.L., "Insanity; Irresistible Impulse". State v. Jackson (Missouri) 142 SW 2d. 45. 6 Missouri Law Review 212-14. (April, 1941).

HULBERT, H.S., "Constitutional Psychopathic Inferiority in Relation to Delinquency". 21 Journal of Criminal Law and Criminology 30-3. (May-June, 1939).

HULBERT, H.S., "EEG -- electroencephalography". 37 Journal of Criminal Law and Criminology 491-7. (March-April, 1947).

HULBERT, H.S., "Psychiatric Reports in Court; Editorial". 31 Journal of Criminal Law and Criminology 660. (March-April, 1941).

HYNNING, Clifford J., "Mental Disorder in Illinois Criminal Law". 12 Chi-Kent Review 19. (1933).

INSANITY: Appeal Against Commitment. Barbee v. Kolb, 179 SW 2d. 701. Arkansas. (1944). 125 Journal of the American Medical Association 932. (July 29, 1944). Reviewed in 12 Medico-Legal and Criminological Review 217. (1944).

INSANITY and Crime. 37 Crim. L.J. 27; 181 L.T. 463.
(1936).

INSANITY -- As an Issue and as a Plea. Ir. L.T. 74:
211-13, 217-19. (August 24-31, 1940).

INSANITY - Trial by Jury. Article 267, Louisiana
Code of Criminal Procedure of 1928, as amended
by Act 136 of 1932. K.L.B. State v. Sample
(Louisiana) 14 So. 2d. 678. 18 Tulane Law
Review 329-34. (December, 1943).

IRRESISTIBLE Impulse. 81 Law Journal 432. (1936).

ISSUE of Insanity in Criminal Trials. 94 Justice
of the Peace 404. (1930).

JACOBY, A.L., "The Psychopathic Clinic in a
Criminal Court- Its Uses and Possibilities".
7 Journal of the American Judicature Society 21.
(1923).

KAHN, E., "The Lawyer and the Psychiatrist".
21 Connecticut Bar Journal 112-22. (April, 1947).

KARPMAN, B., "An Attempt at Re-Evaluation of Some
Concepts of Law and Psychiatry". 38 Journal
of Criminal Law and Criminology 206-17.
(September-October, 1947).

KARPMAN, B., "Impulsive Neuroses and Crime: A
Critical Review". 19 Journal of Criminal Law
and Criminology 575. (1929).

KARPMAN, B., "The Mental Roots of Crime: A Critique"
90 Journal of Nervous and Mental Diseases 89.
(1939).

- KARPMAN, B., "Preliminary to the Psychotherapy of Criminals". 25 Journal of Criminal Law and Criminology 918. (1935).
- KARPMAN, B., "Psychopathology- Felonious Assault Revealed as a Symptom of Abnormal Sexuality; a Contribution to the Psychogenesis of Psychopathic Behavior". 37 Journal of Criminal Law and Criminology 193-215. (September-October, 1946).
- KARPMAN, B., "Psychopathology- From the Autobiography of a Bandit; Toward the Psychogenesis of So-Called Psychopathic Behavior". 36 Journal of Criminal Law and Criminology 305-25. (January-February, 1946).
- KARPMAN, B., "Psychoses in Criminals, Studies in the Psychopathology of Crime". 64 Journal of Nervous and Mental Diseases 331, 482. 67 Journal of Nervous and Mental Diseases 224, 355, 478, 599. 68 Journal of Nervous and Mental Diseases 39. (1926).
- KEEDY, Edwin R., "Criminal Responsibility of the Insane- Reply to Professor Ballantine". 12 Journal of Criminal Law and Criminology 14. (1921).
- KEEDY, Edwin R., "Insanity and Criminal Responsibility". 30 Harvard Law Review 535, 724. (1917)
- KEEDY, Edwin R., "Insanity and Criminal Responsibility". Report of Committee A of the American Institute of Criminal Law and Criminology. 7 Journal of Criminal Law and Criminology 484. (1916).

- KEEDY, Edwin R., "Insanity and Criminal Responsibility". Report of Committee B. of the American Institute of Criminal Law and Criminology. 2 Journal of Criminal Law and Criminology 521. (1911).
- KEEDY, Edwin R., "Insanity and Criminal Responsibility". Second Report of Committee B. of the American Institute of Criminal Law and Criminology. 3 Journal of Criminal Law and Criminology 719, (1912). 890 (1913); 4 Journal of Criminal Law and Criminology 67. (1913).
- KEEDY, Edwin R., "Tests of Criminal Responsibility of the Insane". 1 Journal of Criminal Law and Criminology 394. (1910).
- KENNEDY, F, HOFFMAN, H.R., and HAINES, W.H., "Psychiatric Study of William Heirens". 38 Journal of Criminal Law and Criminology 311-41. (November-December, 1947).
- KINBERG, Olof, "Obligatory Psychiatric Examination of Certain Classes of Accused Persons". 2 Journal of Criminal Law and Criminology 858. (1912).
- KIRCHWEY, George W., "Crime and Punishment. The Influence of the Study of the Results of Prison Punishments on the Criminal Law". 1 Journal of Criminal Law and Criminology 718. (1911).
- LARSON, J.A., and WALKER, A., "Paranoia and Paranoid Personalities: A Practical Police Problem". 14 Journal of Criminal Law and Criminology 350. (1923).
- LAUB, B.R., "Insanity as a Defense to Homicide in Pennsylvania". 20 Temple Law Quarterly 345-57. (December, 1946).

LEGAL Disposition of the Sexual Psychopath. (F.P.F.).
96 University of Pennsylvania Law Review 872-87.
(June, 1948).

LEHRMAN, Philip R., "Some Unconscious Determinants
in Homicide", 13 Psychiatric Quarterly 605.
(1939).

LIND, John E., "Cross-Examination of the Alienist".
13 Journal of Criminal Law and Criminology 232.
(1922).

LIPTON, H.R., "Analysis of 31 Individuals Examined
While Awaiting Trial in Federal Court". 38
Journal of Criminal Law and Criminology 595-612.
(March-April, 1948).

LOEB-LEOPOLD Case, 15 Journal of Criminal Law and
Criminology 341-405. (1924).

LOTT, George M., "The Scope of the Problem of Delin-
quency and Crime and the Contributions of
Psychiatry". 26 Journal of Criminal Law and
Criminology 61. (1935).

LOVELAND, Frank, Jr., "A Criminological Laboratory
in the Massachusetts Correctional System".
23 Journal of Criminal Law and Criminology 620.
(1932).

LUCAS, E.J., "Comments on the Attitude of the Legal
Profession Toward Psychiatry". 5 Law Guild
Review 301-10. (September-October, 1945).

LUNACY and Mental Deficiency Under the National
Health Service Act, 1946. 111 Justice of the
Peace 386-7. (July 12, 1947).

- LUNACY and Mental Treatment. 110 Justice of the Peace 463. (September 28, 1946).
- MACKEY, C., "Psychiatry and the Courts". 12 Journal of the Bar Association of the District of Columbia 449-51. (December, 1941).
- MADIGAN, P.S., "Military Neuro Psychiatry, Discipline and Morale". 32 Journal of Criminal Law and Criminology 491-7. (January-February, 1942).
- MAKAREWICZ, J., "Impressions of an American Voyage by a Polish Criminalist". 20 Journal of Criminal Law and Criminology 326. (1929).
- MANGUN, Clarke W., "The Psychopathic Criminal". 4 Journal of Criminal Psychopathology 117-127. (1942).
- MASCHINOT, G.J., "Irresistible Impulse as a Defense in Criminal Cases. 21 Chi-Kent Law Review 94-7. (December, 1942).
- MATHEW, Theobald, "The Office and Duties of the Director of Public Prosecutions". University of London. The Athlone Press, 1950. Pamphlet.
- McCARTY, Dwight G., "Mental Defectives and the Criminal Law". 14 Iowa Law Review 401. (1929).
- McDERMOTT, Edward J., "Needed Reforms in the Law of Expert Testimony". 1 Journal of Criminal Law and Criminology 698. (1911).
- McINTOSH, R.H., "Temporary Insanity Produced by Voluntary Intoxication". Britts v. State of Florida 30 SO 2d. 363. 1 University of Florida Law Review 80-91. (Spring, 1948).

McNAGHTEN RULES, 26 Journal of Comparative Legislation 3rd Series 65-6. (November, 1944).

McNAGHTEN RULES and the Irresistible Impulse Defence. 13 Medico-Legal and Criminological Review 93. (1945).

McNAUGHTEN RULES. 10 Sol. 53-5. (April, 1943).

MEAGHER, John F.W., "Crime and Insanity: A Discussion of Some Modern Radical Theories". 16 Journal of Criminal Law and Criminology 360. (1925).

MEAGHER, John F.W., "Crime and Insanity: The Legal as Opposed to the Medical View and the Most Commonly Asserted Pleas". 14 Journal of Criminal Law and Criminology 46. (1923).

MEAGHER, John F.W., "Malingering in Criminals - its Forensic Psychiatry Significance". 45 Medico-Legal Journal 78. (1928).

MEDICAL Expert and Mental Diseases. (W.W.D.) 19 Tennessee Law Review 361-5. (April, 1946).

MENDOZA, Salvador, "The New Mexican System of Criminology" 21 Journal of Criminal Law and Criminology 15. (1930).

MENDOZA, Salvador, "Recent Tendencies in Mexican Criminal Procedure". 1 Modern Mexico 16 (1930).

MENNINGER, Karl A., "Medico-Legal Proposals of the American Psychiatric Association". 19 Journal of Criminal Law and Criminology 367. (1928).

- MENTAL Condition of Offenders Against the Law.
96 Justice of the Peace 555. (1932).
- MENTAL Health Service Work. 111 Justice of the
Peace 372-3. (July 5, 1947).
- MENTAL Treatment Act, 1930: Offenders as Voluntary
Patients. 110 Justice of the Peace 463.
(September 28, 1946).
- MENTALLY Defective Criminals - A Gap in the Law.
78 Sol. Journal 396. (1934).
- MERCIER, Charles, "Moral Imbecility". 99 Practitioner
301. (1917).
- MEREDITH, W.C.J., "Insanity as a Criminal Defence;
a Conflict of Views". 25 Canada Bar Review
251-9. (March, 1947).
- MEYER, A., "The Criminal Insane and Borderland
Cases". 71 United States Law Review 564-74.
(October, 1937).
- MEYER, A., "A Review of the Signs of Degeneration
and of Methods of Registration". 52 American
Journal of Insanity. (January, 1896).
- MEYERSON, A., "Legal Phases of Psychiatry". 1
American Journal of Medical Jurisprudence 73-8.
(October, 1938).
- MICHAEL, Jerome, "Psychiatry and the Criminal Law".
21 American Bar Association Journal 271. (1935).
- MILLER, M.A., "Psychiatric Treatment for Offenders-
A Plea for Selective". 37 Journal of Criminal
Law and Criminology 377-83. (January-February,
1947).

MILL, James, "Probation: An Instrument of Imaginative Justice". The Clarke Hall Fellowship. Pamphlet.

MILLS, C.K., "Simulated Insanity". 53 Journal of the American Medical Association 1373. (1909).

MIND at Fault in Statutory Crimes. 19 Iowa Law Review 437. (1934).

MIND of the Prisoner. 109 Justice of the Peace 182-3. (April 21, 1945).

MOORE, A.E., "Care of the Mentally Ill". 27 Michigan State Bar Journal 12-18. (May, 1948).

MOORE, A.E., "Improved Legal Procedure for the Care of the Mentally Ill". 31 Journal of the American Judicature Society 47-8. (August, 1947).

MURCHISON, Carl, "American White Criminal Intelligence". 15 Journal of Criminal Law and Criminology 239, 435. (1924).

MURDER: The Plea of Insanity. Rex v. Cowle. The Times, July 25, 1944. Reviewed in 12 Medico-Legal and Criminological Review 218. (1944).

MURDER: Split Personality Plea. The Times, January 9, 10, 11, 12 (1945). 13 Medico-Legal and Criminological Review 98. (1945).

MURDERERS, Madmen, Mores. 1 Stanford Law Review 134-6. (November, 1948).

NELSON, William, "Psychiatry and Its Relationship to the Administration of the Criminal Law". 17 St. Louis Law Review 320. (1932).

NEW YORK Procedure for Determination of Sanity of Defendant, Desmond Act. 39 Columbia Law Review 1260-8. (November, 1939).

NORDAHL, N., "Insanity as a Defense in Criminal Prosecutions". 28 Marquette Law Review 108-15. (February, 1946).

NORDAHL, N., "Insanity as a Defense in Criminal Prosecutions". 30 Marquette Law Review 62-9. (May, 1946).

NORDSKOG, J.E., "Psychiatry in Criminal Trials". 17 Southern California Law Review 371-82. (June, 1944).

OLSON, Harry, "Crime and Heredity". 7 Journal of the American Judicature Society 37. (1923).

OLTMAN, Jane E., and FRIEDMAN, S., "A Psychiatric Study of 100 Criminals". 93 Journal of Nervous and Mental Diseases 16-41. (1941).

ONUS Of Proof of Insanity as a Defense to a Criminal Charge. 78 Ir. L.T. 81-3, 87-9. (March 25-April 1, 1944).

OVERHOLSER, Winfred, "The Briggs Law of Massachusetts - a Review and an Appraisal". 25 Journal of Criminal Law and Criminology 859. (1935).

OVERHOLSER, Winfred, "Massachusetts Procedure Relative to the Sanity of Defendants in Criminal Cases". The Briggs Law. 19 Minnesota Law Review 308. (1935).

OVERHOLSER, Winfred, "Mental State of Defendants in Criminal Trials - A Comparison of Some Colorado and Massachusetts Procedures". 14 Rocky Mt. Law Review 21-8. (December, 1941).

OVERHOLSER, Winfred, "The Place of Psychiatry in the Criminal Law". 16 Boston University Law Review 322. (April, 1936).

OVERHOLSER, Winfred, "Some Possible Contributions of Psychiatry to a More Effective Administration of the Criminal Law". 17 Canada Bar Review 638-55. (November, 1939).

OVERHOLSER, Winfred, "Some Problems in Psychiatric Expert Testimony". 2 American Journal of Medical Jurisprudence 76-83. (February, 1939).

OVERHOLSER, Winfred, "The Psychiatrist in Court". 7 George Washington Law Review 31-51. (November, 1938).

OVERHOLSER, Winfred, "Psychiatry and the Courts in Massachusetts". 19 Journal of Criminal Law and Criminology 75. (1928).

OVERHOLSER, Winfred, "Psychiatry and the Massachusetts Courts as Now Related". 8 Social Forces 77. (1929).

OVERHOLSER, Winfred, "The Role of Psychiatry in the Administration of Criminal Justice". 93 Journal of the American Medical Association 830. (1929).

OVERHOLSER, Winfred, "Ten Years of Cooperative Effort". 29 Journal of Criminal Law and Criminology 23-36. (May-June, 1938).

PAGE, Leo, "Notes for Juvenile Court Justices". The Clarke Hall Fellowship. Pamphlet.

PAGE, Leo, "The Problem of Punishment: A Note for Magistrates". The Clark Hall Fellowship. Pamphlet.

PARKER, S., "Determination of Insanity in Criminal Cases". 26 Cornell Law Quarterly 375-425. (April, 1941).

PARTRIDGE, G.E., "Current Concepts of Psychopathic Personality". 10 American Journal of Psychiatry 53. (1930).

PARTRIDGE, G.E., "A Study of 50 Cases of Psychopathic Personality". 7 American Journal of Psychiatry 593-673. (1928).

PATON, G.W., "Criminal Law - Insanity and the Admissibility of Confessions". Sinclair v. The King 1947 Argus Law Review 37. 25 Canada Bar Review 285-7. (March, 1947).

PATTERSON, R.M., "Psychiatric Aspects of New Procedure in the State of Michigan". 31 Journal of Criminal Law and Criminology 684-92. (March-April, 1941).

PAULSON, F.J., "Irresistible Impulse as a Plea in Colorado". 20 Notre Dame Law 417-21. (January, 1945).

PEOPLE ex. rel. Bernstein v. McNeill (Superintendent of Mattewan State Hospital). 46 New York Supplement (2nd. Series) 764. 13 Medico-Legal and Criminological Review 98. (1945).

PESCOR, M.J., "The Psychoneurotic Delinquent". 47 Medico-Legal Review 320. (1932).

PILCHER, Ellen, "Relation of Mental Disease to Crime". 21 Journal of Criminal Law and Criminology 212. (1930).

POLLAK, M.C., "Insanity as a Bar to Prosecution in the Federal Courts". 7 Federal Bar Journal 55-74. (October, 1945).

POPURT, Maxwell J., "The Classification of Defective Delinquents". 26 Journal of Criminal Law and Criminology 421. (1935).

PRESENT Insanity Following Conviction. State v. Allen (Louisiana) 15 So 2nd. 870. 18 Tulane Law Review 497-500. (March, 1944).

PROOF Necessary to Overcome Presumption of Sanity in Criminal Prosecutions. 18 Iowa Law Review 521. (1933).

PSYCHIATRIC Opinion and Crime, With Special Reference to Temporary Insanity. 23 East African Medical Journal 150. (May, 1946). Reviewed in 133 Medico- Legal and Criminological Review (1946).

PSYCHIATRY in the Criminal Courts. 94 Justice of the Peace 146. (1930).

PSYCHOANALYSIS and Crime. 108 Justice of the Peace 399. (August 19, 1944).

RABINOWITCH, I.M., "Insanity as a Defence for Crime" (Correspondence). 26 Canada Bar Review 617-19. (March, 1948).

RADZINOWICZ, L., and TURNER, J.W.C., "Mental Abnormality and Crime". 55 Juridical Review 89-108. (August, 1943).

RADZINOWICZ, L., and TURNER, J.W.C., "Psychoanalysis-English Studies in Criminal Science. Editorial Note. 22 Canada Bar Review 19-61. (January, 1944).

RAYMOND, J.P., "Autres Causes d'Interdiction en Regard de la Psychiatrie Moderne". 6 Rev. du B. 6-10. September-October, 1945).

REES, J.R., "Mental Health and the Offender". The Seventh Clarke Hall Lecture. (March, 1947). Pamphlet.

REPORT of the Committee on Psychiatric Jurisprudence to the Section of Criminal Law of the American Bar Association. 1 American Journal of Medical Jurisprudence 121-5. (October, 1938).

REPORT of the Royal Commission on Lunacy and Mental Disorder. London: His Majesty's Stationery Office. (1926). Pamphlet.

RICHMOND, Frank C., "The Criminal Feeble-Minded". 21 Journal of Criminal Law and Criminology 537. (1931).

RICKER, Charles S., "A Critique of the Defective (Massachusetts) Delinquent Law. 6 Massachusetts L. Soc. Journal 94. (1934).

ROBERTSON, Frank W., "The Problem of the Criminal Insane from the Viewpoint of the Physician". 4 Journal of Criminal Law and Criminology 749. (1914).

ROCHE, P.Q., "Modern Training in Penal Psychiatry". 12 Pennsylvania Bar Association Quarterly 161-8. (April, 1941).

ROCHE, The Rt. Hon. Lord, "Some Thoughts on Education and on Juvenile Courts". The Sixth Clarke Hall Lecture. Pamphlet.

ROOD, John R., "Statutory Abolition of the Defense of Insanity in Criminal Cases". 9 Michigan Law Review 126. (1910).

SAMUEL, The Rt. Hon. Viscount, "Is the Criminal to Blame - or Society?". The Fourth Clarke Hall Lecture. Pamphlet.

SANFORD, Nevitt R., "A Psychoanalytic Study of Three Types of Criminals". 5 Journal of Criminal Psychopathology 57-69. (1943).

SCHILLING, E.C., Jr., "Insanity at the Time of the Crime- The Manner in Which Plea is Raised and Disposed of". 8 Louisiana Law Review 403-9. (March, 1948).

SCHMIDL, F., "Psychological and Psychiatric Concepts in Criminology". 37 Journal of Criminal Law and Criminology 37-48. (May-June, 1946).

SCIENTIFIC Proof. Problems of Mental Responsibility; Rules in McNaghten's Case. 61 South African Law Journal 189-93. (May, 1944).

SCOTTISH Lunacy and Mental Deficiency Laws. (F.M.) S.L.T. 67-9. (October, 1946).

SELLIN, Thorsten, "Crime, Encyclopedia of the Social Sciences". Vol. 4. New York:Macmillan. (1936). Pamphlet.

SELLING, L.S., "Psychopathic Clinic in a Criminal Court, Its Uses and Possibilities- A Reprise". 28 Journal of the American Judicature Society 169-73. (April, 1945).

- SHEA, "The Growth of the Plea of Insanity as a Defense to Crime". 13 Bi-Mo. Law Review 141. (1930).
- SHEPHERD, Harold, "Not Guilty by Reason of Insanity". 2 Southern California Law Review 53. (1928).
- SHEPHERD, Harold, "The Plea of Insanity Under the 1927 Amendments to the California Penal Code". 3 Southern California Law Review 1. (1929).
- SHEPHERD, Harold, "The Psychopathic Laboratory". 13 Journal of Criminal Law and Criminology 485. (1923).
- SMITH, B.A., "Education and Supervision of Defectives". 28 Journal of Criminal Law and Criminology 210-19. (July- August, 1937).
- SMITH, Herbert L., "Psychiatric and Expert Testimony". 2 New York State Bar Association Journal 99. (1930).
- SMITH, Hubert Winston, "Scientific Proof in Relation to Law and Medicine". 21 Canadian Bar Review 707. (1943).
- SMITH, J.B., "Irresistible Impulse. Does Proof of an Irresistible Impulse Establish the Defense of Insanity?". 14 Journal Bar Association Kansas 174-88. (February, 1946). 31 Virginia Law Review 865-87. (September, 1945).
- SMITH, R., "Insanity and the Criminal Law in Montana". Montana Law Review 1-13. (Spring, 1947).

SNEED, J.T., "Insanity as a Defense in Criminal Law and Semi-Responsibility". Fisher v. U.S. 66 Sup. Ct. 1318. 25 Texas Law Review 295-302. (January, 1947).

SPECIAL Schools for Defectives. 103 Justice of the Peace 298-9. (May 6, 1939).

SPIRER, "The Psychology of Irresistible Impulse". 33 Journal of Criminal Law and Criminology 457-62. (March-April, 1943).

SPITZKA, E.C., "Political Assassins: Are They all Insane?" 2 Journal of Mental Pathology No. 2, 69. (1902).

STARKE, J.G., "Modern Developments in Psychiatry and the Law". 16 Australia Law Journal 227-31. (December, 1942).

STEKEL, Wilhelm, "The Sexual Root of Kleptomania". 2 Journal of Criminal Law and Criminology 239. (1911).

STEVENSON, G.H., "Insanity as a Criminal Defence; The Psychiatric Viewpoint". 25 Canada Law Review 731-8. (August-September, 1947).

STEVENSON, G.H., "Insanity as a Defence for Crime; An Analysis of Replies to a Questionnaire". 25 Canada Law Review 871-8. (October, 1947).

STEVENSON, William G., "Criminality". Medico-Legal Journal. (September, 1877).

STREIT, Edward F., "Conflicting Viewpoints of Psychiatry and the Law on the Matter of Criminal Responsibility". 8 Notre Dame L. 146. (1933).

- SUBNORMAL Mentality and Criminal Responsibility.
State v. Pinski 163 SW (2d.) 785 (1942).
121 Journal of the American Medical Association
1242 (April 10, 1943). 11 Medico-Legal and
Criminological Review 156. (1943).
- SUNDBERG, B.E., "Larceny - Kleptomania as a
Defense". 23 Bar Briefs 27-8. (April, 1947).
- SUTHERLAND, E.H., "The Person Versus the Act in
Criminology". 14 Cornell Law Quarterly 159.
(1929).
- SWETLOW, G.I., "Anti-Social Behavior and the
McNaughten Rule". 72 United States Law Review
675-88. (December, 1938).
- SYZ, H., "Phylobiological Aspects of Forensic
Psychiatry". 29 Journal of Criminal Law and
Criminology 76-89. (May-June, 1938).
- SZUKELEWICZ, E.S., "Examinations by Psychiatrists
in Criminal Cases". 14 St. John's Law Review
439-48. (April, 1940).
- TAYLOR, H.L., "Partial Insanity as Affecting the
Degree of Crime - A Commentary on Fisher v.
U.S." 34 California Law Review 625-43.
(December, 1946).
- TEMPLE, Most Rev'd. William, Archbishop of New York,
"The Ethics of Penal Action". The First Clarke
Hall Lecture. Pamphlet.
- THIBAUT, C.D., "Present Insanity -Its Scope and
Determination". 6 Louisiana Law Review 693-8.
(May, 1946).
- THOMPSON, C.B., "A Psychiatric Study of Recidivists".
94 American Journal of Psychiatry No. 3.
(November, 1937).

- TREDGOLD, A.F., "Moral Imbecility". 99 Practitioner 43. (1917).
- TULIN, Leon A., "The Problem of Mental Disorder in Crime; A Survey". 32 Columbia Law Review 933. (1932).
- TULIN, Leon A., "The Role of Penalties in Criminal Law". 37 Yale Law Journal 1048. (1928).
- TURNER, A.L., "Mental Element in Rape" Rex v. Burles 1947 A.L.R. 460. 4Res Judicatae 43-6. (May, 1948).
- TURNER, J.W.C., "Mental Element in Crimes at Common Law". 6 Cambridge Law Journal 31. (1936).
- VANCE, R., Jr., "Effects of Mental Defects Amounting to Less Than Insanity Upon Criminal Responsibility". 31 Kentucky Law Journal 83-6. (November, 1942).
- VOLUNTARY Mental Health Services. 104 Justice of the Peace 132-3; 148-9. (March 9-16, 1940).
- VON HENTIG, H., "Psychopathology - The Suspect: A Study in the Psychopathology of Social Standards. 39 Journal of Criminal Law and Criminology 19-33. (May-June, 1948).
- WAITE, John Barker, "Irresistible Impulse and Criminal Liability". 23 Michigan Law Review 443. (1925).
- WALLER, Willard, "A Deterministic View of Criminal Responsibility". 20 Journal of Criminal Law and Criminology 88. (1929).

- WEBER, C.O., "Psuedo-Science and the Problem of Criminal Responsibility". 19 Journal of Criminal Law and Criminology 181. (1928).
- WEBSTER, Blakely R., "Psychoses Among Criminals". 2 Psychiatric Quarterly 136-143. (1928).
- WEIHOFEN, Henry, "Insanity as a Defense in Criminal Cases in Colorado". 9 Rocky Mt. Law Review 213-16. (April, 1937).
- WEIHOFEN, Henry, "Partial Insanity and Criminal Intent". 24 Illinois Law Review 505. (1930). 47 Medico-Legal Journal 87. (1930).
- WEIHOFEN, Henry, "The Purpose of Punishment". 7 Tennessee Law Review 145. (1929).
- WEIHOFEN, Henry and OVERHOLSER, Winfred, "Mental Disorder Affecting the Degree of a Crime". 56 Yale Law Journal 959-81. (June, 1947).
- WEINBLATT, "Present Insanity Statute". 15 Southern California Law Review 520-23. (June, 1942).
- WERTHAM, Frederic, "The Catathymic Crisis". 37 Arch. Neurol. & Psychiat. 974-978. (1937).
- WERTHAM, Frederic, "Psychiatry and the Prevention of Sex Crimes". 28 Journal of Criminal Law and Criminology 847-53. (March-April, 1938).
- WERTHAM, Frederic, "Psychiatry and the Prevention of Sex Crimes". 71 U.S.L. Rev. 560-3. (October, 1937).
- WHITE, A. Moresby, "Legal Insanity in Criminal Cases: Past, Present and Future". 18 Journal of Criminal Law and Criminology 165. (1927).

WHITE, William A., "Insanity and Crime". 10 Mental Hygiene 265. (1926).

WHITE, William A., "Insanity and Criminal Responsibility". Journal of Criminal Law and Criminology. (1911).

WHITMAN, "Capital Punishment and Irresistible Impulse as a Defense". 5 Notre Dame 188. (1930).

WHOLEY, Cornelius C., "Psychiatric Report of Study of Psychopathic Inmates of a Penitentiary". 28 Journal of Criminal Law and Criminology 52. (1937).

WILBUR, Curtis D., "Should Insanity Defense to Criminal Charge be Abolished?" 8 American Bar Association Journal 631. (1922).

WILLIAMS, M.G., and ELLIOT, M.A., "Court Procedure and Subsequent Treatment in Cases of the Criminal Insane". 35 Journal of Criminal Law and Criminology 233-41. (November-December, 1944).

WILSON, H.B., "The Insanity Plea". 62 American Law Review 579. (1928).

WISE, B.O., "Delinquency: A Mental Hygiene Problem". 30, Journal of Criminal Law and Criminology 353-8. (September-October, 1939).

- WOODBIDGE, F., "Physical and Mental Infancy in the Criminal Law".⁸⁷ University of Pennsylvania Law Review 426-54. (February, 1939).
- WOODBIDGE, F., "Some Unusual Aspects of Mental Irresponsibility in the Criminal Law". 29 Journal of Criminal Law and Criminology 822-47. (March-April, 1939).
- WOODS, Anderson, "An Utilitarian Test for Criminal Responsibility". 18 Journal of Criminal Law and Criminology 191. (1927).
- WOODWARD, James W., "Psychological Aspects of the Question of Moral Responsibility". 21 Journal of Criminal Law and Criminology 267. (1930).
- ZILBOORG, G., "Dynamics of Schizophrenic Reactions Related to Pregnancy and Childbirth". 8 American Journal of Psychiatry 733. (1929).
- ZILBOORG, G., "Murder and Justice". 5 Journal of Criminal Psychopathology 1. (1943).
- ZILBOORG, G., "The Reciprocal Responsibilities of Law and Psychiatry". XII The Shingle of the Philadelphia Bar Association 79. (No. 4:April, 1949).
- ZILBOORG, G., "Some Sidelights on the Psychology of Murder". 81 Journal of Nervous and Mental Diseases 442. (1935).

ADDENDA

APPENDIX D

